

2011

# Metropolitan Water District of Salt Lake and Sandy v. Zdenek Sorf : Brief of Appellee

Utah Supreme Court

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METROPOLITAN WATER DISTRICT OF  
SALT LAKE & SANDY,

**V.**

Defendant/Appellant.

District Court No. 100921025

Appeal from a Judgment of the Third Judicial District Court of Salt Lake County  
Honorable Joseph C. Fratto, Jr.

Shawn E. Draney (4026)  
Scott H. Martin (7750)  
David F. Mull (9597)  
SNOW, CHRISTENSEN & MARTINEAU  
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DEC 23 2011



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## **JURISDICTION**

Appellee Metropolitan Water District of Salt Lake & Sandy (“MWDSLS”) agrees with the jurisdictional statement of Defendant/Appellant Zdenek Sorf (“Sorf”).

## **ISSUES ON APPEAL**

Sorf identifies two general issues on appeal: (1) whether the district court abused its discretion in denying his Motion to Set Aside the Default Judgment; and (2) whether the district court erred in denying his Motion for Leave to File a Counterclaim.

MWDSLS does not disagree with Sorf’s statement of the issues.

## **DETERMINATIVE AUTHORITIES**

Rule 60(b), Utah R. Civ. P.:

Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . The motion shall be made within a reasonable time and . . . not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. . . .

Rule 13(d), Utah R. Civ. P.:

“Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.”

## **STATEMENT OF THE CASE**

MWDSLS is a Utah Local District, a political subdivision of the State of Utah.

Utah Code Title 17B, Chapter 1 discusses Local Districts, while Utah Code Ann. §§ 17B-

2a-601 through 608 particularly apply to Metropolitan Water Districts, a subset type of Local District.

MWDSLS provides supplemental, treated, drinking water to its two (2) member cities, Salt Lake City and Sandy City. MWDSLS water is critical to the water supply of more than its member cities. Salt Lake City Public Utilities is the largest retail drinking water provider in the state, serving a large area outside of Salt Lake City boundaries.

While this matter deals with the Salt Lake Aqueduct ("SLA"), MWDSLS has interests in three large water treatment plants, five large water pipelines and five large finished water reservoirs. These facilities are tied together and operate in a coordinated fashion to provide redundancy, and service to both sides of the Salt Lake Valley.

The Little Cottonwood Water Treatment Plant ("LCWTP") receives raw water from Little Cottonwood Creek, and from the Provo River System via the SLA. The SLA is a mostly 69" inside diameter, 72" outside diameter, steel reinforced concrete, "open flow," pipe. SLA carries raw water from the toe of Deer Creek Dam at the top of Provo Canyon to the LCWTP.

MWDSLS owns a 2/7<sup>th</sup> interest in the Jordan Valley Water Treatment Plant ("JVWTP") which is supplied with raw water primarily via the Jordan Aqueduct ("JA"), which is a pressurized steel pipe that carries water from the Provo River. The recently-constructed Point of the Mountain Water Treatment Plant ("POMWTP") in Draper is served raw water primarily via the Provo Reservoir Canal ("PRC"), which carries water from the mouth of Provo Canyon. From the PRC at the point of the mountain, raw water

is carried via the raw water portion of Point of the Mountain Aqueduct ("POMA") to POMWTP.

On the finished water side, water can be moved from any of the three treatment plants to serve east, west, south and north. The SLA is very much like one leg of a three-legged stool. SLA carries finished water to storage facilities at the LCWTP site, a reservoir at approximately 7400 South, and Terminal Reservoir near the mouth of Parley's Canyon. In all, SLA is more than 41 miles in length. The finished water portion of JA carries treated water to a large terminal reservoir at approximately 5800 South and 3800 West, and then to 2100 South.

From POMWTP, treated water is carried via the finished water portion of POMA, a new pressurized steel pipe that reaches to the finished water SLA at the LCWTP. A large finished water reservoir is located at the POMWTP site. Finished water can be moved through POMA in either direction. POMA is also tied to the finished water portion of JA via the 150<sup>th</sup> South Pipeline. Water can similarly be moved in either direction in the 150<sup>th</sup> South Pipeline.

The United States Department of Interior, Bureau of Reclamation designed and constructed the SLA from 1939 to 1942, and from 1946 to 1951 as part of the Provo River Project. It is constructed of different classes of pipe, with different maximum and minimum load/cover specifications. MWDSLS is making preliminary preparations for major rehabilitation or replacement of the SLA in the upcoming decades.

SLA sits in the SLA corridor which is a mixture of deeded easement, reserved easement, and fee lands. The deeded portions were initially acquired by MWDSLS. As

those lands and easements were acquired in the late 1940s and early 1950s they were transferred to the United States, and MWDSLS was reimbursed. The amounts reimbursed to MWDSLS were added to the total repayment obligation of MWDSLS. The United States held title to the SLA and SLA corridor until October 2006 when the SLA, SLA corridor and Terminal Reservoir were transferred to MWDSLS, pursuant to the 2004 Provo River Project Transfer Act, Pub. Laws 108-382.

Sorf's home is in Sandy, Utah. The developer of Mr. Sorf's subdivision platted the subdivision so that much of what would become Mr. Sorf's backyard was encumbered by the previously deeded SLA easement. There MWDSLS holds the perpetual easement "to construct, reconstruct, operate and maintain" the SLA, including "appurtenant structures, which latter may be situated above ground surface. . . ." This easement was recorded with the Salt Lake County Recorder in 1946—decades before what would become the Sorf lot was platted.

Unfortunately, Sorf has recently been installing large-scale improvements (rock retaining walls, concrete slabs, water feature), structures (garage, large deck covering, large gazebo), and additional fill on the SLA and the SLA corridor easement in his backyard, and oddly, in the back half of his neighbor's lot. Such improvements imperil the SLA, violate MWDSLS's easement, and are contrary to MWDSLS regulations, state "blue stakes" law, and Sandy City ordinance. For more than twenty years, prior to Sorf's installation and building, his back yard was appropriately landscaped with grass, some flat work, and bushes. His backyard also contained some trees, which were prohibited by

United States regulations and policies. United States enforcement was admittedly lax, thus one of MWDSLS' motivations for title transfer.

MWDSLS became aware of Sorf's new installations and buildings upon routine inspection of the SLA corridor in spring 2009. It repeatedly approached him to cease his violative activities, restore its access to SLA, and remove those improvements which violate MWDSLS's easement and regulations. Sorf refused MWDSLS at every turn and declined or ignored *every* effort to assist him in regulatory compliance. MWDSLS sought to meet with Sorf on-site repeatedly, sent him three separate written notices which included MWDSLS's SLA encroachment regulations, and posted two separate "stop-work" notices on his property—both of which were torn down. All the while Sorf's work continued.

MWDSLS filed suit against Sorf for injunctive and declaratory relief and damages. Sorf was served by a licensed process server on October 28, 2010 at 5:40 p.m. with the Summons and Complaint and a letter from MWDSLS's counsel referencing the commencement of the lawsuit and requesting a dialogue with him. Sorf did not answer the Complaint. On November 22, 2010, Sorf spoke with MWDSLS's counsel, who suggested that he call MWDSLS personnel to arrange a discussion. He did not contact MWDSLS, nor did he file an answer. On December 1, 2010, MWDSLS moved the district court to enter a default judgment, and mailed notice of its request for default judgment to Sorf. On December 16, 2010, the district court entered the default judgment. The default judgment was personally served on Sorf at his home on December 23, 2010.

It was not until January 24, 2011 that Sorf even brought the default judgment to his counsel's attention. He moved to set aside the default judgment on January 31, 2011 alleging mistake and excusable neglect. Despite his involvement as a named party in 28 separate Utah lawsuits, prior default judgments, and serving as an officer, director and agent for purposes of service for five separate Utah corporate entities, Sorf asserts he is somehow a neophyte in the most basic ways of the Courts, including service of process and the obligation to respond to an action. Sorf's "mistake" was not "genuine," nor was his neglect "excusable." The district court did not abuse its discretion in finding that Sorf had failed to demonstrate sufficient mistake, surprise, inadvertence, or excusable neglect to justify setting aside the default judgment.

The district court also correctly found that Sorf did not meet the additional "meritorious defense" requirement for setting aside a default. Every one of the defenses Sorf asserted in his "[Proposed] Answer" fails as a matter of law, for the following reasons:

1. MWDSLS's easement is recorded, perpetual, and defined by its terms;
2. MWDSLS's promulgated regulations are supported and authorized by law;
3. one cannot adversely possess government real property;
4. there is no such thing as abandonment of a utility easement when the utility is still in the ground requiring operation, maintenance, and potential relocation or replacement;
5. any encroaching improvement on a utility easement making utility maintenance or use more difficult is violative *per se*; and

6. equitable estoppel cannot be asserted against a governmental entity, especially when based only on alleged comments of staff.

Sorf's "[Proposed] Answer" did not include a counterclaim. Four months after the Default Judgment was entered, two and a half months after he offered his "[Proposed] Answer," and one month after the court denied his motion to set aside the Default, Sorf sought to file a counterclaim. The district court properly denied this request. Over the course of many months prior to filing suit, MWDSLs made repeated efforts to protect the easement by enforcement of its regulations. Sorf admits that MWDSLs issued a "stop work" order to him on August 31, 2010 to halt all his activities. Likewise, Sorf admits he received the letter of October 28, 2010 which accompanied MWDSLs's Summons and Complaint. These are factual occurrences that gave rise to Sorf's misguided regulatory taking counterclaim. Apparently realizing his counterclaim is barred, Sorf tries to tie his regulatory taking claim to the default judgment—a judicial act—rather than MWDSLs's pre-suit enforcement of its SLA regulations—a regulatory act.

Despite being well aware of MWDSLs's consistent efforts to make him comply with the regulations governing servient owners' use of the SLA easement, Sorf made no timely effort to assert any claim for inverse condemnation. MWDSLs filed its Complaint against him in October 2010, but his proposed Answer made no mention of any counterclaim, let alone an inverse condemnation counterclaim. At no time during the briefing or argument on Sorf's motion to set aside the default did he ever mention a counterclaim of any kind. Instead, he waited until after the district court denied his motion to set aside the default. It was only at that point, with the case firmly and finally

adjudicated by the district court, that he asked to file an inverse condemnation counterclaim. The district court correctly denied his request, and this Court should uphold that denial as correct.

### **RESPONSE TO SORF'S STATEMENT OF MATERIAL FACTS**

Sorf's Statement of Material Facts is flawed in many respects. Most significantly, many of his supposed fact statements blend improper legal argument with otherwise accurate fact statements and incorrect characterizations of those facts. Other fact statements make tactical omissions of key details important to understanding why the district court granted MWDSLS's Motion for Default Judgment, denied Sorf's Motion to Set Aside Default, and denied his post-judgment motion to assert a counterclaim.

MWDSLS offers the following additional facts and clarifications to fill out the procedural chronology, and ensure this Court sees the whole factual picture. The numbered paragraphs presented below do not correspond to the numbered paragraphs in Sorf's Appellant's Brief.

1. MWDSLS's SLA regulations define the parameters of public use and occupancy of its fee and easement lands. (Regulations for Non-District Use of Salt Lake Aqueduct (R. 21-32) (attached as Add. 1.)) They are promulgated pursuant to Utah Code Ann. § 17B-1-103. (R. 10.)

2. MWDSLS provided these regulations to Sorf along with a form Cooperation Agreement for his continued limited use and occupancy of the SLA corridor long before MWDSLS filed its Verified Complaint. (MWDSLS's Verified Complaint (R.11, ¶ 33.)

3. Disregarding the regulations, Sorf has made significant landscaping improvements to his back yard, including earthwork, addition of fill, construction of rock retaining walls and fencing, installation of concrete pads and a water feature, and construction of a large shed or barn, a gazebo, and a hot tub. (*Id.* at R. 10-15.)

4. The U.S. Bureau of Reclamation established maximum and minimum load/cover criteria for the several different classes of steel reinforced concrete pipe used to construct the SLA. (*See id.* at 9-11.)

5. MWDSLS now administers and licenses encroachments on the SLA; previously that was the responsibility of the United States. (*Id.* at R. 8-11.) Unpermitted encroachments on the easement present significant concerns with respect to SLA access, repair, and replacement. (*Id.* at 9-10.)

6. Sorf asserts as a “fact” that MWDSLS has “expanded” the easement, and attempts to paint MWDSLS as “unilaterally” creating new rights for itself under the easement. *See* Sorf’s Statement of Facts at ¶ 5. These assertions and characterizations of MWDSLS’s actions and the regulations are improper argument, and Sorf supports them simply by citing to the regulations themselves. The regulations were propounded for purposes of protecting the SLA and the SLA corridor, not expanding the easement, and neither expressly nor impliedly support Sorf’s argument that the regulations wrongly expanded the easement.

7. Sorf implies that there was some imperfection in service of the Summons and Complaint upon him, stating that they were “left at Mr. Sorf’s home, but not

personally served on him.” (Appellant’s Brief at 3.) Sorf omits all details supporting the district court’s finding that the Summons and Complaint were properly served on him.

8. The Summons and Complaint were served by a licensed process server at 5:40 p.m. on October 28, 2010 at Sorf’s home to an adult female who answered the door and verbally confirmed herself to be his wife. (Process Server Return of Service (R. 79) (attached as Add. 2); Declaration of Mel Ashton at ¶¶ 3-4 (R. 171) (attached as Add. 3.))

9. MWDSLS’s process server, Mel Ashton, is certified and licensed by the Utah Department of Public Safety. Previously, Mr. Ashton was a Salt Lake City police officer for eight years, and then was a US Drug Enforcement Agency officer for twenty years. (Ashton Decl. at ¶ 2 (R. 171.)) Mr. Ashton testified under penalty of perjury in both his Return of Service and Declaration that he served the Complaint and Summons and the letter, which Sorf admits he received, at Sorf’s home. (*Id.* at ¶ 4.)

10. Mr. Ashton served the Summons and Complaint on an adult woman who answered the front door. Mr. Ashton asked this woman “Are you Mrs. Sorf?” to which she responded “Yes.” (*Id.*) Apparently this woman, after receiving the documents in-hand, threw them down. (*Id.* at ¶ 5.)

11. Also on October 28, 2010, Sorf received a letter from MWDSLS that referenced the Summons and Complaint. (*See* October 28, 2011 letter from Shawn Draney to Zdenek Sorf (R. 118.)) Sorf claims that the Summons and Complaint were not actually enclosed with the letter—an assertion that the district court apparently found unpersuasive in light of the service by the Process Server’s affidavit. MWDSLS’s letter to Sorf invited a conversation in hopes of resolving the issues surrounding Sorf’s

unlicensed and violative improvements and structures on the SLA and in the SLA corridor. (*Id.*)

12. Sorf asserts that based on his reading of this letter, he believed that MWDSLS would refrain from filing a lawsuit if a settlement could be reached. (Appellant's Brief Statement of Facts at ¶ 34). The letter contains no such statements, either express or implied. (*See* October 28, 2011 letter (R. 118.)) In fact, the letter states just the opposite as it references the Summons and Complaint that had been filed with the Court commencing the lawsuit. (*Id.*)

13. Sorf called Shawn Draney, counsel for MWDSLS, on November 22, 2010. Sorf claims that his conversation with MWDSLS's counsel gave him the "impression" that MWDSLS would only pursue a lawsuit if a settlement could not be reached. (Appellant's Brief at ¶ 36.) However, the Record contains facts which would support the district court's exercise of discretion to disregard Sorf's "impression": Mr. Draney told Sorf this was a matter of great concern to MWDSLS, reiterated the importance of the SLA and its corridor, and stated concerns that Sorf's landscaping and backyard structures might add weight to the pipe that it was not designed to handle. Mr. Draney then suggested Sorf call MWDSLS personnel and set up a meeting with them, and told Sorf that he was going to proceed with the entry of a default as the time to answer had elapsed. Mr. Draney gave Sorf the phone numbers for MWDSLS's General Manager, Mike Wilson, and MWDSLS's Engineering Manager, Wayne Winsor. Given the importance of this matter and the lack of any correspondence from Sorf, Mr. Draney had his paralegal Deb Wharff present in his office during this telephone call. Ms. Wharff

immediately memorialized the call in a written memorandum. No one on the call ever requested or offered an extension of time for Sorf to file an answer. (Declaration of Deborah M. Wharff at ¶ 7 (R. 179) (attached as Add. 4); “DMW Memo re Call from Sorf” (R. 208) (attached as Add. 5.))

14. Sorf asserts that he called both Mike Wilson and Wayne Winsor, but the Record shows that neither Mr. Winsor nor Mr. Wilson ever received a phone call or voicemail from Sorf. (Declaration of Michael L. Wilson at ¶ 3 (R. 210-211) (attached as Add. 6); Declaration of Wayne Winsor at ¶ 3 (R. 213-214) (attached as Add. 7.))

15. Further, all incoming calls to MWDSLS (whether answered or not) are electronically logged. (Declaration of Ryan Nicholes at ¶ 3 (R. 216-223) (attached as Add. 8.)) Based on MWDSLS’s electronic records of all incoming calls, Sorf never called Mr. Wilson or Mr. Winsor. (*Id.* at ¶¶ 3-5 and telephone data records attached thereto.)

16. Sorf was repeatedly informed of the lawsuit and the danger of default. In addition to MWDSLS’s October 28, 2010 service of the Summons and Complaint on Sorf, and the November 22, 2010 telephone conversation between Sorf and MWDSLS’s counsel, he received MWDSLS’s Application for Default Judgment in December 2010. (Sorf Decl. at ¶ 12 (R. 115.)) The Application for Default Judgment specifically referenced the filed Complaint and Summons, the date of service, and Defendant’s failure to answer. (Application for Default Judgment (R. 82-84) (attached as Add. 9))

17. Despite all the notice given to Sorf about MWDSLS’s action to protect the SLA, he claims to have been completely ignorant of the Summons and Complaint, and

the entry of default, until January 24, 2011. (Appellant's Brief at ¶¶ 52-53.) Likewise, Sorf suggested to the district court that he was legally unsophisticated, and he argued that he simply did not understand the importance of filing an answer to a complaint or responding to an application for default judgment. (Memo. in Support of M. to Set Aside Default Judgment (R. 108, 110.))

18. According to records maintained by the Utah Division of Corporations, Sorf is an officer, director, secretary, or registered agent for five separate Utah corporate entities. (Wharff Decl. at ¶ 6 (R. 176-180) (attached as Add. 4.))

19. Prior to this lawsuit, Sorf had been a named party in 28 separate lawsuits in the State of Utah alone. A number of these suits ended in entry of default judgment against Sorf. (*Id.* at ¶¶ 3-5.)

20. In Sorf's original motion to set aside the default judgment, he did not submit any proposed answer, nor did he mention any counterclaim for inverse condemnation. (R. 106-118.)

21. On February 3, 2011, Sorf supplemented the Motion and Memo to Set Aside Default Judgment with a "[Proposed] Answer." (R. 122-134.)

22. His proposed Answer did not include any counterclaim. (*See id.*)

23. The Court heard oral argument on Sorf's Motion to Set Aside Default Judgment on March 8, 2011 and denied the Motion via ruling from the bench. (R. 345.)

24. Per the Court's request, counsel for MWDSLs prepared a [Proposed] Order Denying Defendant's Motion to Set Aside Default Judgment ("Order") and submitted the same to Sorf's counsel. (R. 353-355.)

25. On March 15, 2010, Sorf filed an Objection to the Order which contested the decision of the Court, asserted the Court was in error on a host of legal and factual points, and reargued these points. Sorf's objection made no mention of any claim for inverse condemnation. (R. 350-352.)

26. On March 17, 2011, MWDSLs responded to Sorf's Objection to the Order noting that it was essentially an effort at reconsideration and was therefore specifically disallowed under the Utah Rules as stated in Gillette v. Price, 2006 UT 24, 135 P.3d 861

27. That same day, the Court signed the [Proposed] Order as submitted by MWDSLs. (Order, signed March 17, 2011 (R. 353-55) attached as Add. 10.))

28. According to the Order, "[t]he Default Judgment entered December 13, 2010 by this Court remains in full force and effect." (*Id.* at ¶ 2.)

29. On April 14, 2011, Sorf indicated for the first time that he wished to file a counterclaim. (R. 374-402.)

30. His proposed counterclaim alleged that MWDSLs's regulations effected a regulatory taking of his property. (R. 474-481.)

### **SUMMARY OF ARGUMENTS**

The district court did not abuse its discretion in denying Sorf's Motion to Set Aside the Default Judgment, because Rule 60(b) of the Utah Rules of Civil Procedure does not necessarily require the district court to grant such motions in all cases. In this case, the summons and complaint were properly served on Sorf, and he has extensive experience with the civil justice system. He was well aware of the consequences of failing to answer the complaint. Given these facts, he could not justify setting aside the

default judgment on grounds of mistake, inadvertence, surprise, or excusable neglect, and setting aside the default judgment would not have been “in furtherance of justice” as Rule 60(b) requires.

Moreover, Sorf misinterprets the second prong required for setting aside default judgments: the “meritorious defense” requirement. The district court is not required to set aside a default judgment if proffered defenses are meritorious; rather, a default judgment must not be set aside unless defenses are meritorious. In any event, none of the nineteen affirmative defenses he proffered (on appeal he asserts only four) were meritorious:

1. While the scope of MWDSLS’ regulatory authority is not restrained by the scope of its easement, the regulations do not exceed the scope of the easement;
2. Sorf cannot adversely possess government land;
3. Neither the U.S., nor MWDSLS abandoned the SLA easement; and
4. MWDSLS cannot be equitably estopped from enforcing its regulations.

The district court correctly denied Sorf’s post-judgment Motion for Leave to File a Counterclaim, for five main reasons:

1. Sorf’s argument that he could not file his counterclaim until after the district court had denied his Motion to Set Aside is not supported by logic, Utah law, or takings jurisprudence. Nothing prevented Sorf from filing his counterclaim with his proposed Answer. By that time, MWDSLS had taken all acts of enforcement of its SLA easement rights and regulations. The district court’s judgment was not the regulatory act at issue, and could not constitute a taking.

2. There was no merit to Sorf's claim that MWDSLS's attempts to protect the SLA through enforcement of the easement and the concomitant regulations constituted a regulatory taking. MWDSLS has significant latitude to promulgate regulations as necessary to protect its facilities and operations. These regulations are entitled to a high degree of deference. Lastly, enforcement of MWDSLS's regulations does not destroy all economically viable uses of Sorf's whole parcel of property. For more than twenty years, Sorf's back yard was enjoyed without things like a large water feature, a large gazebo or a large motorcycle barn, which are the items of greatest concern to MWDSLS.

3. Sorf's Motion for Leave to File a Counterclaim was essentially just a second, improper motion to reconsider the district's court denial of his Motion to Set Aside the Default Judgment. Such motions are expressly forbidden, and therefore properly denied.

4. Sorf never served a pleading as required under Rule 13(d) of the Utah Rules of Civil Procedure.

5. Sorf did not first reopen the Default Judgment, as required by case law.

### **ARGUMENT**

#### **I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING SORF'S MOTION TO SET ASIDE THE DEFAULT.**

Rule 60(b) does not require a district court to set aside a default even if the movant shows "mistake, inadvertence, surprise, or excusable neglect." Rather, the court "may" set aside a default judgment for these reasons, but only if (a) the motion is timely, and (b) the court finds that setting aside the default is "in furtherance of justice." See Rule 60(b).

Utah R. Civ. P. The question of what is “in furtherance of justice” obviously implicates the court’s equitable discretion. In weighing the equities, courts interpreting Rule 60(b) of the Federal Rules of Civil Procedure have asked whether it would be “manifestly unconscionable that a judgment be given effect.” Atwell v. Equifax, Inc., 86 F.R.D. 686, 688 n.2 (D. Md. 1980). Even if the movant satisfies all the requirements of Rule 60(b), case law imposes an additional requirement: the movant must show that he “has a ‘meritorious defense’ to the action.” Hernandez v. Baker, 2004 UT App 462, ¶ 3, 104 P.3d 664 (quoting Erickson v. Schenkers Int’l Forwarders, Inc., 882 P.2d 1147, 1148 (Utah 1994)).

The district court’s denial of Sorf’s motion to set aside the default judgment is “largely a discretionary matter,” and should be reversed only if it is “clear the court abused that discretion.” Heath v. Mower, 597 P.2d 855, 858 (Utah 1979) (citing Warren v. Dixon Ranch Co., 260 P.2d 741 (Utah 1953)). “That some basis may exist to set aside the default does not require the conclusion that the court abused its discretion in refusing to do so when facts and circumstances support the refusal.” Katz v. Pierce, 732 P.2d 92, 93 (Utah 1986). There are good reasons for this deferential appellate standard of review. The district court sits closer to the facts than an appellate court, and is better able to evaluate the equitable arguments in favor of setting aside a default:

In situations where the exercise of discretion is appropriate, considerable weight should be given to the determination of the trial court, whichever way it goes. This is true because due to his close involvement with the parties, the witnesses, and the total circumstances of the case, he is in the best position to judge what the interests of justice require in safeguarding the rights and interests of all parties concerned.

*Barber v. Calder*, 522 P.2d 700, 702 (Utah 1974) (affirming trial court's entry of default judgment); *see also*, *Eagle Associates v. Bank of Montreal*, 926 F.2d 1305, 1307 (2<sup>nd</sup> Cir. 1991) (finding trial court did not abuse discretion in denying motion to set aside, and explaining that "the trial judge, who is usually the person most familiar with the circumstances of the case and is in the best position to evaluate the good faith and credibility of the parties, is entrusted with the task of balancing these competing considerations.") (applying Rule 60(b) of the Federal Rules of Civil Procedure).

**A. The District Court Properly Exercised its Discretion in Finding that Sorf's Failure to Answer the Verified Complaint Was Not Due to Mistake, Inadvertence, Surprise, or Excusable Neglect.**

Sorf argues that the district court failed to consider all of his arguments under Rule 60(b). Sorf is wrong, because the district court explicitly based its decision both "upon the written submissions of the parties and oral argument presented" at the hearing. (Order Denying Defendant's Motion to Set Aside Default (R. 353-354.)) Sorf argued in his written submissions to the district court (as he is arguing again to this Court) that he met the requirements of Rule 60(b)(1). Specifically, he claimed that he was not served with the summons and complaint, and that he mistakenly believed no default would be entered against him if he attempted to settle the lawsuit with MWDSLS. (*See* Sorf's Memo. in Sup't of Mot. to Set Aside Default (R. 109-110.)) At the hearing, Sorf's counsel again argued for relief under Rule 60(b)(1), but the district court was not persuaded, and directed MWDSLS to draft the order denying Sorf's Motion. The Order stated:

1. Based on the Court's finding that Defendant was properly served with the Complaint and Summons, that *Defendant has not made an adequate showing of excusable neglect, mistake, or inadvertence in his failure to respond to the Complaint*, and that those defenses proffered by Defendant to Plaintiff's Complaint are not meritorious as a matter of law under the circumstances given Plaintiff's defined easement, its prior federal ownership, and Plaintiff's status as a political subdivision of the state, the Court hereby denies Defendant's Motion.

(Order Denying Defendant's Motion to Set Aside Default (R. 353-354) (emphasis added.)) The district court thus duly considered whether Sorf had shown excusable neglect, mistake, or inadvertence, and concluded that he had not.

Sorf objected to the court's Order with what was essentially a request that the court reconsider the bases for its ruling. Sorf argued—as he argues again to this Court—that the court had “misapprehended” his arguments as to “mistake, inadvertence, and excusable neglect.” (See Sorf's Objection to Proposed Order (R. 350-351.))<sup>1</sup> He did not argue that the proposed order did not accurately reflect the bases for the court's decision. (See *id.*) The court disagreed with Sorf's arguments and signed the Order, thereby memorializing the bases for its denial of Sorf's motion to set aside the default. “A court's interpretation of its own order is reviewed for clear abuse of discretion and we afford the district court great deference.” Uintah Basin Med. Ctr. v. Hardy, 2008 UT 15, ¶ 9, 179 P.3d 786.

“[A] party trying to set aside a default judgment must show that he has used due diligence and that he was prevented from appearing by circumstances over which he had

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<sup>1</sup> “Motions to reconsider are not recognized by the Utah Rules of Civil Procedure.” Tschaggeny v. Milbank Ins. Co., 2007 UT 37, ¶ 15, 163 P.3d 615 (citing Gillett v. Price, 2006 UT 24, ¶¶ 5, 7-8, 135 P.3d 861) (directing attorneys to “immediately discontinue the practice of filing post judgment motions to reconsider.”).

no control.” Heath v. Mower, 597 P.2d 855, 858 (Utah 1979) (internal quotation omitted). “Utah precedent clearly establishes that some measure of diligence is necessary to constitute excusable neglect . . . .” Cadlerock Joint Venture II, LP v. Envelope Packaging of Utah, Inc., 2011 UT App. 98, ¶ 9, 251 P.3d 837. “[I]f default is issued when a party *genuinely* is mistaken to a point where, absent such mistake, default would not have occurred, the equity side of the court . . . [should] grant relief.” Lund v. Brown, 2000 UT 75, ¶ 10, 11 P.3d 277 (quoting May v. Thompson, 677 P.2d 1109, 1110 (Utah 1984)) (emphasis added); see also, Weiss v. St. Paul Fire & Marine Ins. Co., 283 F.3d 790, 795 (6<sup>th</sup> Cir. 2002) (“Where default results from an *honest* mistake rather than willful misconduct, carelessness or negligence there is especial need to apply Rule 60(b) liberally.” (emphasis added.)) Neglect is only excusable if the movant can show that he “used due diligence and that he was prevented from appearing by circumstances over which he had no control.” Airkem Intermountain, Inc. v. Parker, 513 P.2d 429, 431 (Utah 1973). Here, Sorf’s alleged “mistake” is not “honest” or “genuine” and his neglect is not “excusable.” Equity should not side with him.

Sorf claims that he did not receive the summons and complaint that were served on him through an adult woman at his house. (Appellant’s Brief at 24.) However, he never moved for insufficiency of service of process per Rule 12(b)(5), Utah R. Civ. P., and thus waived any arguments about the sufficiency of process. See Rule 12(h), Utah R. Civ. P.; Watkiss & Campbell v. Foa & Son, 808 P.2d 1061, 1067 (Utah 1991) (waiver of defective process defense for failure to initially raise it by motion).

The summons and complaint were properly served on Sorf. Mr. Mel Ashton of A.A. & Associates, Inc., a licensed process server, swore under the penalty of perjury that he served the Summons, Complaint, Exhibits and the October 28, 2010 letter from MWDSL's counsel to Sorf at his home at 5:40 p.m. on October 28, 2010. (*See* Proof of Service (R. 79) (attached as Add. 2); Ashton Decl. at ¶¶ 3-5 (R. 170-172), (attached as Add. 3.)) Mr. Ashton served the papers on an adult female who answered the door and verbally represented herself to be Sorf's wife. The Utah Court of Appeals provided explicit instruction on this point in Cooke v. Cooke, 2001 UT App 110, 22 P.3d 1249:

This jurisdiction has never addressed whether a presumption of correctness applies to a return of service by a private process server. We have held that a sheriff's return of service is "presumptively correct and is prima facie evidence of the facts stated therein," but the "invalidity or absence of service of process can be shown by clear and convincing evidence." Classic Cabinets, 1999 UT App 88 at ¶ 11 (citation omitted). Moreover, the person purportedly served has "the burden of showing that service was invalid." Skanchy v. Calcados Ortope SA, 952 P.2d 1071, 1074-75 (Utah 1998). In Classic Cabinets, we extended the presumption of correctness to a constable's return of service. *See* Classic Cabinets, 1999 UT App 88 at ¶ 11. For the same reasons expressed in Classic Cabinets, we now extend the presumption of correctness to a return of service by a private process server. *See id.* at ¶ 12. All process servers are subject to the same criminal charges for falsifying a return of service. *See* Utah Code Ann. § 78-12a-4 (1996). Since all process servers are held equally accountable under the law, it follows that their returns of service should be given an equal presumption of correctness. Thus, Stubbs's return of service certifying that Husband was personally served is presumptively correct and can be disproved only by clear and convincing evidence.

*Id.* at ¶ 9.

It is critical to note that Sorf acknowledges he was served with the October 28, 2010 letter that, by its terms and under Mr. Ashton's Proof of Service, accompanied the Summons and Complaint. (Appellant's Brief at 11, ¶ 33.) Furthermore, Mr. Ashton also

personally served the signed Default Judgment on Sorf and this same adult female at Sorf's home at 1:09 p.m. on December 23, 2010. (*See* Default Judgment with service notation (R. 100-103) (attached as Add. 11); Ashton Decl. at ¶¶ 7-9 (R. 170-172), attached as Add. 3.))

Between these two service occasions, Sorf received five other documents in this case by U.S. Mail. MWDSLS's counsel mailed via U.S. Mail to Sorf's home address: 1) the Notice of Filing of Lis Pendens (October 28, 2010) which specifically referenced this current and on-going case; 2) the Application for Entry of Default Judgment (December 1, 2010) which specifically referenced the filing and service of Summons and Complaint; 3) the Default Certificate (December 13, 2010) which also specifically referenced the Summons and Complaint; 4) the Military Service Affidavit (December 13, 2010); and 5) the Military Service Order (December 13, 2010). In sum, Sorf was served twice and was mailed five case documents since the inception of the lawsuit.

Next, Sorf asserts that because MWDSLS's October 28, 2010 letter invited a resolution dialogue and he spoke with MWDSLS's counsel about one month later, he believed settlement negotiations might forestall the filing of a lawsuit. (Appellant's Brief at 11, ¶¶ 34, 36.) Sorf also represents that he attempted to call Mr. Winsor and Mr. Wilson at MWDSLS upon counsel's suggestion. (*Id.* at 12, ¶ 38.) These are fictional representations for a number of reasons. First, the Summons and Complaint had already been personally served at Sorf's home. (*See* Proof of Service and Ashton Decl.) Second, on November 22, 2010, Mr. Draney specifically told Sorf to call Mr. Wilson or Mr. Winsor at MWDSLS to discuss this matter but in the meantime, he was moving forward

with his application for default judgment as the time to answer the Complaint had passed. (Wharff Decl. at ¶ 7 and DMW Memo.) Third, Mr. Winsor and Mr. Wilson have never received telephone calls or voicemails from Defendant. (See Wilson Decl. at ¶ 3 and Winsor Decl. at ¶ 3.) Confirming this, MWDSLS's incoming phone logs demonstrate that no incoming phone calls (answered or not) came to MWDSLS from Mr. Sorf's telephone numbers from December 3, 2010 forward. (See Nicholes Decl. at ¶¶ 3-5 and MWDSLS telephone data records attached thereto.)

Sorf claims not to have known about the Summons and Complaint, and the entry of default, until January 24, 2011. (See Appellant's Brief at 16, ¶¶ 52-53.) Similarly, he suggested to the district court that he was legally unsophisticated, and he argued that he simply did not understand the importance of filing an answer to a complaint or responding to an application for default judgment. (R. 108-110.) The reality is that Sorf is quite experienced in civil litigation. Based on Utah state court records, he has been a party to some 28 separate lawsuits. (See Wharff Decl. at ¶ 3.) He has retained a variety of lawyers (including his current counsel Strong & Hanni) on many of these occasions, including matters involving failures to appear and default judgments. (*Id.* at ¶ 5.) Moreover, he is an officer, director, and/or registered agent for five Utah registered corporate entities. (*Id.* at ¶ 6.) In other words, service of process and default judgments are familiar territory for Sorf. There is no "genuine mistake," "due diligence," or "excusable neglect" here. There is only a habitual and willful refusal to respond.

Courts have upheld default judgments against defendants with far better arguments for excusable neglect than Sorf can show here. For example in *Arbogast Family Trust v.*

*River Crossings, LLC*, Utah Court of Appeals upheld the trial court's entry of a default judgment rejecting the defendant's assertion of mistake and excusable neglect. The defendant argued that it did not answer the complaint for a number of reasons including previous correspondence with plaintiff and counsel, resolution discussions, the withdrawal of counsel, and new counsel's vacation. 2008 UT App 277, ¶¶ 25-28, 191 P.3d 39. The defendant in *Arbogast* was far more engaged and responsive to the action than Sorf has been in this matter, but nevertheless, the Court could not find a "reasonable justification or excuse for [Defendant's] failure to answer." *Id.* at ¶ 28.

**B. Sorf's Alleged "Meritorious Defenses" Do Not Entitle Him To Have the Default Judgment Set Aside.**

Sorf objects that the district court gave short shrift to his supposedly meritorious defenses. However, his Memorandum in Support of Motion to Set Aside Default Judgment did not even mention his arguments on the merits. (*See* Memo. in Sup't of M. to Set Aside Default Judgment (R. 109-111.)) Instead, he simply submitted a proposed answer as an after-the-fact "supplement" to his Memorandum. (R. 122-134.) Even though Sorf presented essentially no written argument that the defenses in his proposed Answer were meritorious, the district court nonetheless considered the defenses and expressly found that they were "not meritorious." (Order Denying Def's M. to Set Aside Default (R. 353-354.))

While Judge Fratto's order indicates that he found Sorf's defenses to be not meritorious as a matter of law, Sorf mistakenly argues that the district court subsequently "admit[ed] that Mr. Sorf's defenses were never actually considered and no determination

as to the merits of the defenses made.” (Appellant’s Brief at 21; 30.) In reality, the court’s written Order is accurate, and the court never “admitted” otherwise. Judge Fratto clearly stated that he “did, as part of Mr. Belnap’s motion to reconsider this, opine in terms of the—whether there was a meritorious defense presented” for purposes of a motion to set aside a default. (Hearing Transcript (R. 558.)) Analysis of whether proffered defenses are “meritorious” as a matter of law for purposes of a motion to set aside under Rule 60(b) is crucially different from a ruling on the merits. Judge Fratto did not act as fact finder to rule on the merits of Sorf’s defense, but he was not supposed to.

Sorf incorrectly asserts that relief from a default judgment “is warranted when” the movant shows a meritorious defense. (Appellant’s Brief at 29.) This misconstrues the “meritorious defense” requirement. It is not a tool for setting aside defaults, but rather another hurdle a defendant must clear to set aside a default and have his defenses considered. Simply showing a meritorious defense does not necessarily entitle the movant to have the default set aside. Generally, parties in default are “not entitled to be heard on the merits of the case.” Russell v. Martell, 681 P.2d 1193, 1195 (Utah 1984). “[I]t is unnecessary, and moreover inappropriate, to even consider the issue of meritorious defenses unless the court is satisfied” that the other requirements of Rule 60(b) have been established. See State By and Through Utah State Dept. of Social Servs. v. Musselman, 667 P.2d 1053, 1056 (Utah 1983).

As noted above, Rule 60(b) provides that if a movant meets the requirements of Rule 60(b), the court “may” set aside the default if necessary to serve the interests of justice. The case law cited by Sorf does not suggest that showing a meritorious defense

entitles the movant to have the default set aside. See Lund, 2000 UT 75, 11 P.3d 277.

The trial court has significant discretion to decide whether the facts of a particular case justify setting aside default. In other words, a party in default is not entitled to demand that the trial court consider the merits of his defenses, but the trial court must ensure that the defenses are meritorious prior to setting aside a default.

In considering whether defenses are meritorious or not, trial courts should avoid “mini-trials” analyzing the facts allegedly supporting the defense. See Musselman, 667 P.2d at 1059 (Durham, J. dissenting). Rather, the purpose of the meritorious defense requirement is to determine whether the defenses would be “meritorious as a matter of law,” assuming the movant could adduce facts to support them. *Id.* That is precisely what the trial court did in this case. The court found that Sorf’s proffered defenses “are not meritorious as a matter of law under the circumstances given Plaintiff’s defined easement, its prior federal ownership, and Plaintiff’s status as a political subdivision of the state.” (Order (R. 354.))

Sorf’s proposed Answer asserted nineteen affirmative defenses, but on appeal he has chosen to rely on only four. (See Appellant’s Brief at 30-34 (relying on the First, Third, Fourth, Fifth, and Sixth<sup>2</sup> Affirmative Defenses.)) Sorf has tacitly conceded that the other fifteen affirmative defenses asserted to the district court were not meritorious. MWDSLs addresses each of the remaining four defenses below.

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<sup>2</sup> While separately numbered, the Fifth and Sixth Affirmative Defenses are actually both part of the same defense: equitable estoppel.

1. The Regulations Do Not Exceed the Scope of MWDSLS Authority.

Sorf's argues that MWDSLS's regulations exceed the scope of the easement. (*See* Appellant's Brief at 30-31 (citing First Affirmative Defense (R. 125-26.)) It is important to recognize that Sorf has incorrectly framed the argument regarding the validity of MWDSLS's regulations. The validity of the regulations does not turn on whether they go beyond the scope of the use restrictions to which MWDSLS is legally entitled by virtue of its ownership of the SLA easement. Rather, the validity of the regulations turns on whether Sorf can establish that MWDSLS exceeded its authority to promulgate them (which Sorf does not attempt to argue). As a very separate issue, even if a regulation is valid it may result in a taking for which compensation must be paid. MWDSLS addresses this second argument below in Section II of this Brief, in the context of Sorf's post-judgment motion for leave to file a regulatory takings counterclaim. However, MWDSLS's regulations, its exercise of a governmental function, satisfy even Sorf's erroneous standard, because MWDSLS's regulations are fully consistent with MWDSLS' proprietary property rights.

It is undisputed that MWDSLS's easement, by its terms and law, is perpetual and defined. It allows MWDSLS "to construct, reconstruct, operate and maintain" the SLA, including "appurtenant structures, which latter may be situated above ground surface. . . ." (*See* Easement Deeds (R. 39-49) (attached as Add. 12.)) It was recorded with the Salt Lake County Recorder in 1946. *Id.* It was held by the United States until 2006. *Id.* The SLA sits within this easement. As a matter of law, MWDSLS's rights are dominant to Sorf's servient estate. *See, e.g.,* Restatement (Third) of Property: Servitudes

§ 1.2 (2000) (“An easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.”), cited in *Holladay Town Center, LLC v. Brown Family Holdings, LLC*, 2011 UT 9, ¶ 36, n.11, 238 P.3d. 452. While Sorf’s [Proposed] Answer offered generic language regarding a dominant estate holder’s “limited and reasonable use” of the easement land, the case law specific to utility easements explicitly supports full and perpetual utilization of the easement free of impediment from the servient estate. *Id.* This is a critical theme that guides MWDSLs and other utilities nationwide, as the following cases demonstrate:

- *Mid-America Pipeline Co. v. Lario Enterprises, Inc.*, 942 F.2d 1519 (10th Cir. 1991). In this case, the Tenth Circuit supported the pipeline easement holder’s claim for injunctive relief mandating the removal of fill and asphalt overlying the company’s high-pressure liquid gas pipeline easement. The court held that asphalt and fill were “structures” within the meaning of the easement and that such materials substantially interfered with the operation and maintenance of the company’s pipeline, including surveillance, surveys, excavation, maintaining, leak detection, and repairing the pipeline. The court pointed out that “[a]n obstruction or disturbance of an easement is anything which wrongfully interferes with the privilege to which the owner of the easement is entitled by making its use less convenient and beneficial than before.” *Id.* at 1527 (citation omitted).
- *Mississippi River Transmission Corp. v. Wachter Const., Inc.*, 731 S.W.2d 445 (Miss. Ct. App. 1987). In this case, the servient estate owner introduced between six and ten feet of fill and some asphalt surfacing over plaintiff’s natural gas pipeline easement. The court ruled that the fill and asphalt over the pipeline right of way interfered with the pipeline owner’s easement for various reasons. The court held that “[t]he serving estate owner may not make the easement less useful or convenient.” 731 S.W.2d at 450 (citation omitted). The easement grant to the pipeline company included the right to “lay, construct, reconstruct, replace, renew, maintain, repair, operate, change the size of, and remove pipes and pipelines for the transportation of gas . . . over, through, upon, under and across” the defendant’s property. *Id.* at 446.

- Banyan Const. Co., Inc. v. Union Elec. Co., 840 S.W.2d 298 (Ms. Ct. App. 1992). In this case, the court held that the construction of a home encroaching on a 150 foot wide utility transmission line easement was not allowed even though there was no utility line in place at that time. The court noted that the easement held by the electric utility company granted it the right to install, maintain, or relocate its lines within the easement at any time. The court held that despite the fact that the home was substantially completed, the easement and the rights there under prevailed and the building and improvement upon the easement were to be removed. Id. at 301-302.
- Cox v. East Tenn. Nat. Gas Co., 136 S.W.3d 626 (Tenn. Ct. App. 2003). In this case, the court held that the servient estate owner's proposal to place four or more feet of additional fill over a gas pipeline unreasonably interfered with the easement holder's rights due to the potential for increased excavation time, the necessity of bringing in additional equipment to make the now required deeper excavations, and the resulting time delays for such maintenance. Id. at 628. The gas pipeline easement in *Cox* echoed MWDSLS's easement, specifically providing for "laying, constructing, maintaining, operating, altering, replacing, inspecting, patrolling, servicing, repairing and removing pipelines . . . ." Id. at 627.

Sorf wildly exaggerates the impact of MWDSLS's regulations, claiming he has been "deprived of all useful purpose of his backyard." (Appellant's Brief at 3.) In his "[Proposed] Answer," he asserted that MWDSLS is expanding its easement and preventing his "reasonable uses of his property" by imposing MWDSLS's regulations for non-district use of the SLA corridor. ([Proposed] Answer at 2 (R. 122-134.)) This is not a supportable defense, for a number of reasons. First, Sorf fails to acknowledge that his backyard was just that—a landscaped back yard (grass, trees, bushes, some flatwork)—for over twenty years before he began his large-scale improvements in 2009. With MWDSLS's regulations, he still has a landscaped back yard, just as he has had for the more than two decades he has lived at his current address. Second, MWDSLS's

regulations are promulgated in accordance with statute<sup>3</sup> and come with a strong presumption of validity.<sup>4</sup> More importantly, they specifically allow for Sorf and most, if not all, other servient estate holders to license certain SLA corridor encroachments—just as was done with the United States Bureau of Reclamation for the previous six decades.<sup>5</sup> (See MWDSLS Regulations, Chapter 16 – Regulation for Non-District Use of SLA, (R. 21-32) (attached as Add. 1.)) Even a cursory review of these regulations reveals the nature, concerns, and protection specifications for the SLA, as well as the licensing process and the rights of appeal for each applicant—neither of which Sorf has availed himself to. (*Id.*) In sum, MWDSLS’s regulations allow for landscaping, certain hardscapes, and existing trees more than twenty feet from the center of the aqueduct. Sorf is free to enjoy all these things, just as he did in the past.

Lastly, regardless of Sorf’s knowledge or perspective on MWDSLS’s easement, his continued occupation of it constitutes trespass *per se*:

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<sup>3</sup> See Utah Code Ann. § 17B-1-301(2)(i).

<sup>4</sup> See, e.g., State v. Ansari, 2004 UT App 32, ¶ 10, 100 P.3d 231 (“It is a basic principle that legislative enactments are endowed with a strong presumption of validity.”); 6 McQuillin Mun. Corp. § 20:6 (3rd ed.) (same).

<sup>5</sup> U.S. Bureau of Reclamation regulations have long required encroachment licenses on federal reclamation rights of way. See 43 C.F.R. 429.7. Before MWDSLS’s regulations, there was a well-established framework for managing encroachments. See “Land Use Authorizations” in Reclamation Manual: Directives and Standards, U.S. Bureau of Reclamation (Jan. 3, 2002) (providing “standard procedures for issuing land use authorization documents such as easements, leases, licenses, and permits which allow others to use Reclamation lands and interests in its land . . .”), available at <http://www.usbr.gov/recman/lnd/lnd08-01.pdf>. Therefore, Sorf’s assertion that MWDSLS’s regulations present a new and never before seen regulatory environment is patently incorrect.

In order to be liable for a trespass on land under the rule stated in [Restatement] § 158, it is necessary only that the actor intentionally be upon any part of the land in question. It is not necessary that he intend to invade the possessor's interest in the exclusive possession of his land and, therefore, that he know his entry to be an intrusion.

Gallegos v. Lloyd, 2008 UT App 40, ¶ 11, 178 P.3d 922 (*quoting* Restatement (Second) of Torts § 164 cmt. a (1965)).

2. Sorf Cannot Adversely Possess the SLA Easement.

There is no merit to Sorf's argument for adverse possession. (*See* Appellant's Brief at 32-33 (citing Third Affirmative Defense) (R. 127.)) There is simply no such thing as adverse possession of government property. Utah Code Ann. § 78B-2-216; *see also* 10 McQuillin Mun. Corp. § 28:71 (3rd ed.) (title to property held by a municipal corporation for a public use cannot be acquired by adverse possession); 3 Am. Jur. 2d Adverse Possession § 268 (generally, title by adverse possession cannot be acquired as to public property or to property held as a public trust); Peterson v. Johnson, 34 P.2d 697, 698-99 (Utah 1934) (title to public domain cannot be acquired by adverse possession by inclosing part of public domain within fence); Nyman v. Anchor Development, L.L.C., 2003 UT 27, ¶ 12, 73 P.3d 357 (same); Utah Copper Co. v. Eckman, 152 P. 178 (Utah 1915) (same). The United States held this easement from 1946 to 2006. Since then MWDSLs has held it in trust for the public. (Easement Deeds (R. 39-49) (attached as Add. 12.)) Sorf's adverse possession defense is without merit.

3. Neither the U.S. nor MWDSLs Abandoned the Easement.

There is no way Sorf could ever establish that MWDSLs had somehow abandoned the SLA Easement. (*See* Appellant's Brief at 32-33) (citing Fourth Affirmative Defense

(R. 127)). In *Lunt v. Lance*, the Utah Court of Appeals specifically addressed the requirements for abandonment of an easement:

An easement is abandoned where there is action releasing the right to use the easement combined with clear and convincing proof of the intent to make no further use of it. Put another way, a history of non-use, coupled with an act or omission showing a clear intent to abandon is sufficient to show abandonment. Actual abandonment or intent to abandon may also be inferred from extended non-use of a portion of an easement “in connection with other facts. In determining whether an easement has been abandoned, courts should consider whether or not the right was acquired by prescription or grant, the extent of its use, and the actual intent of the owner.

2008 UT App 192, ¶ 25, 186 P.3d 978 (internal quotations and citations omitted). Sorf’s [Proposed] Answer asserted that MWDSL’s SLA corridor easement was abandoned because there has been little if any activity on the ground. ([Proposed] Answer at 3 (R. 127.)) As detailed above, the SLA has been in the ground for six decades. It is a perpetual easement “to construct, reconstruct, operate and maintain” the SLA, including “appurtenant structures, which latter may be situated above ground surface . . . .” (Easement Deeds (R. 39, 48) (attached as Add. 12.)) Sorf’s assertion that a long undisturbed utility line and supporting easement are somehow lost to abandonment by the passage of time defies law and logic. Western Gateway Storage Co. v. Treseder, 567 P.2d 181, 182 (Utah 1977) (“[A] right gained by conveyance may not be lost by non-use alone and . . . an actual intent to abandon [must] be evident.”). It should go without saying that underground utilities pervade all developed urban and rural areas, and their maintenance, operation, reconstruction, and relocation is critical for public welfare and safety. Such is the case here. Sorf has demonstrated nothing that would give any

indication of MWDSLS's abandonment of the SLA and its corridor. To the contrary, MWDSLS conducted routine inspections of the SLA corridor and affirmatively took steps to address Sorf's unlicensed encroachments thereon. (Verified Compl. at ¶¶ 33-35 (R. 11-12.))

4. MWDSLS Cannot Be Equitably Estopped from Protecting the SLA.

There is no merit to Sorf's final defense of equitable estoppel. (See Appellant's Brief at 33) (citing Fifth and Sixth Affirmative Defenses (R. 127-28)). Equitable estoppel<sup>6</sup> is generally not available against governmental entities:

Our decision is reinforced by the institutional reluctance of Utah courts to apply equitable doctrines against municipal bodies and governmental subdivisions. See Eldredge v. Utah State Ret. Bd., 795 P.2d 671, 675 (Utah Ct. App. 1988) (explaining that "the doctrine of [equitable] estoppel is not assertable against the state and its agencies"); Xanthos v. Board of Adjustment, 685 P.2d 1032, 1041 (Utah 1984) (Howe, J., dissenting) (explaining that generally, courts are reluctant to impose the equitable doctrines of laches and waiver against governmental subdivisions).

Tooele Assoc. L.P. v. Tooele City, 2011 UT App 36, ¶ 3, 251 P.3d 835; see also Vial v. Provo City, 2009 UT App 122, ¶ 26, 210 P.3d 947 ("As a general rule, estoppel may not be invoked against a governmental entity.").

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<sup>6</sup> The elements of equitable estoppel are:

(1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; (2) reasonable action or inaction by the other party taken on the basis of the first party's statement, admission, act, or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.

Eldredge v. Utah State Retirement Bd., 795 P.2d 671, 675 (Utah Ct. App. 1990).

Sorf seemingly acknowledges this general rule, but argues that this case presents “unusual circumstances.” He attempts to parlay alleged conversations with MWDSLS employees into binding approval of his easement encroachments, claiming the evidence of his detrimental reliance on alleged oral statements is so clear that he would suffer a grave “injustice” if MWDSLS were not equitably stopped from protecting the SLA easement. (Appellant’s Brief at 33-34.) An additional basis for his equitable estoppel defense, newly raised in this appeal, is that Sorf looked around his neighborhood and could not tell that MWDSLS was enforcing its rights under the SLA easement against other servient property owners.<sup>7</sup> Sorf never asserted this in his proposed Answer. (See [Proposed] Answer at 3-4 (R. 127-28.))

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<sup>7</sup> Essentially, Sorf is making an Equal Protection Clause “class of one” claim without formally declaring it as such. The federal courts have described such claims as follows:

In the paradigmatic class-of-one case, a public official inflicts a cost or burden on one person without imposing it on those who are similarly situated in material respects, and does so without any conceivable basis other than a wholly illegitimate motive. . . . The paradigmatic “class of one” case, more sensibly conceived, is one in which a public official, with no conceivable basis for his action other than spite or some other improper motive (improper because unrelated to his public duties), comes down hard on a hapless private citizen.

Highland Dev. Inc. v. Duchesne County, 505 F. Supp. 2d 1129, 1150 (D. Utah, 2007) (quoting Jicarilla Apache Nation v. Rio Arriba County, 440 F.3d 1202, 1209 (10<sup>th</sup> Cir. 2006)). To establish a “class of one” Equal Protection claim, Sorf would have to show two elements: (1) that MWDSLS intentionally treated him differently from others similarly situated; and (2) “that the official action was *objectively* irrational and abusive.” *Id.* (internal quotation omitted) (emphasis in original). “[W]hen the class consists of one person or entity, it is *exceedingly difficult* to demonstrate that any difference in treatment is not attributable to a quirk of the plaintiff or even to the fallibility of administrators whose inconsistency is as random as it is inevitable.” Jicarilla, 440 F.3d at 1212-13 (emphasis added).

If this Court found Sorf's equitable estoppel arguments meritorious, it would represent an unprecedented expansion of the narrow exception upon which Sorf relies.

Although our courts have never required that the governmental statement be written, our supreme court has observed that “[t]he few cases in which Utah courts have permitted estoppel against the government have involved very specific written representations by authorized government entities.” Anderson v. Public Serv. Comm’n, 839 P.2d 822, 827 (Utah 1992). In both Celebrity Club, Inc. v. Utah Liquor Control Commission, 602 P.2d 689 (Utah 1979), and Eldredge v. Utah State Retirement Board, 795 P.2d 671 (Utah Ct.App.1990), Utah appellate courts applied equitable estoppel against government entities based on “very clear, well-substantiated representations by government entities.” Anderson, 839 P.2d at 828 (discussing Celebrity Club and Eldredge).

McLeod v. Retirement Bd., 2011 Utah App. 190, ¶ 22, 257 P.3d 1090. In McLeod, the plaintiff claimed he detrimentally relied on three different telephone conversations with government employees. Those conversations were corroborated, the plaintiff claimed, by documents later mailed to him and posted on a government website. Id. at ¶¶ 23-24. Neither the conversations nor the subsequent written corroboration justified an equitable estoppel claim against the government entity because “in our view, they fall short of ‘very clear, well-substantiated representations by government entities.’” Id. (quoting Anderson v. Public Serv. Comm’n, 839 P.2d 822, 828 (Utah 1992)). Sorf's equitable estoppel defense is based on similar alleged verbal statements, but lacks any of the documentary corroboration that was asserted in McLeod. Even if properly raised on appeal, Sorf's uninformed assumption that MWDSLs was not enforcing the SLA easement around his neighborhood would also obviously “fall short of ‘very clear, well-substantiated representations by government entities.’” McLeod, 2011 Utah App. 190, ¶

Finally, government employees cannot bind the governmental entity to commitments or conveyances that would divest assets held in trust for the public without approval of the legislative body or receipt of fair market value compensation. *See, e.g., Sears v. Ogden*, 533 P.2d 118, 119 (Utah 1975); *Salt Lake Co. Comm. v. Salt Lake Co. Attny.* 1999 UT 73, ¶ 31, 985 P.2d 899 (Utah 1999); *Price Dev. Co. v. Orem City*, 2000 UT 26, ¶ 26, 995 P.2d 1237. The SLA and the SLA corridor are MWDSLS assets held in trust for the public. As a matter of law, MWDSLS staff's alleged comments to Sorf do not support his equitable estoppel defense.

## II. THE DISTRICT COURT PROPERLY DENIED SORF'S MOTION FOR LEAVE TO FILE A COUNTERCLAIM.

Sorf's Motion for Leave to File a Counterclaim was properly denied for five distinct reasons. First, his argument that his counterclaim did not ripen until after the court had denied his Motion to Set Aside is not supported by logic or Utah law. Second, his Motion for Leave was doomed because MWDSLS's actions did not constitute a regulatory taking. Finally, three distinct procedural flaws justified the district court's denial of Sorf's motion.

### A. Sorf's Cause of Action Accrued When MWDSLS Expressly Demanded that Sorf Comply With the SLA Easement and its Regulations—Not When the Judgment Was Entered.

Sorf argues that MWDSLS's pre-litigation demands that he stop all encroaching landscaping did not ripen his counterclaim. Instead, he claims, it ripened only when there was a court judgment ratifying MWDSLS's attempts to enforce the SLA easement and regulations. A cause of action for a regulatory taking accrues when a government entity

seeks to apply the regulations to the landowner's detriment. See *Gillmor v. Summit*

*County*, 2010 UT 69, 246 P.3d 102. As the Court in *Gillmor* explained:

[O]nce an allegedly unconstitutional zoning ordinance is applied to a land owner to prevent her from using or developing her property in a beneficial way, she has suffered an injury, her cause of action accrues, and she may seek redress by bringing a timely challenge to the application of the ordinance to her in a district court action . . . .

2010 UT 69, ¶ 33. Thus, Sorf's regulatory taking claim ripened when MWDSLs took action to enforce its regulatory rights under the easement.<sup>8</sup>

Like Sorf, the appellee in *National Advertising v. Murray City* argued "that only after receiving final confirmation [from the court] that their permit was valid were they able to pursue a counterclaim for breach of contract." 2006 UT App. 75, ¶ 9, 131 P.3d 872. The Court disagreed:

We note that the Crawfords' contention that they could not file their claim for breach of contract and damages until the court found their permit to be

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<sup>8</sup> Sorf's attack on the regulations does not seem to be limited in how the regulations were applied to him. To the contrary, he seems to mount a facial challenge to the regulations, arguing that they simply go beyond the scope of SLA easement language:

The SLA easement does not prohibit Mr. Sorf, *or any other landowner*, from installing improvements nor does it authorize the District to compel the removal of improvements. As such, it is Mr. Sorf's position that the authority granted through the default judgment [based on the regulations] dramatically exceeds the express language of the easement.

(Appellant's Brief at 31 (emphasis added.)) The law is clear that a claim for a facial regulatory taking accrues when the regulations are promulgated:

A facial challenge to a land use regulation becomes ripe upon the enactment of the regulation itself. . . . [T]his *limited* rule was meant to apply *only* to facial challenges to regulatory takings where the injury to the plaintiff is said to occur at the moment the ordinance is enacted and the plaintiff's property value is "taken."

*Gillmor*, 2010 UT 69 at ¶ 31 (internal quotation omitted) (emphasis in original).

valid makes little sense. The Crawfords could have filed their claim as part of their original complaint and simply requested that the trial court bifurcate the proceedings. Such action would have eliminated the present procedural morass.

*Id.* at ¶ 26, n. 18. Sorf's argument that he had to wait until *after* the district court issued a final judgment confirming MWDSLS's regulatory rights is wrong.

Sorf's claim for inverse condemnation matured when MWDSLS sought to enforce the SLA easement regulations against him. MWDSLS told Sorf to stop work on his backyard landscaping—which, according to Sorf, cost him “nearly \$150,000”—in August 2010. (Sorf's Mem. in Sup't of Motion for Leave to File Counterclaim, citing Declaration of Zdenek Sorf at ¶ 44 (R. 385.)) While MWDSLS had diligently communicated with Sorf and sought to enforce the regulations long before then (*see* Verified Complaint at ¶¶ 30-48 (R. 11-14)), Sorf has admitted that MWDSLS clearly sought to enforce the regulations against him no later than August 2010. In fact, a photograph depicting the stop work order, dated August 31, 2010, is attached as Addendum 14 to this brief. (Exhibit 9 to MWDSLS's Verified Complaint (R. 67.)) Thus, by Sorf's own admission, MWDSLS enforced the SLA easement regulations against him approximately two months before MWDSLS even filed suit against him. MWDSLS's Verified Complaint was the culmination of this enforcement. It was based on the terms of the SLA easement and the appurtenant regulations, and demanded the removal of landscaping and structures, as well as the entry of a Cooperation Agreement to define the rights and obligations of the parties. There can be no doubt that

MWDSLS's Verified Complaint itself was the final articulation of MWDSLS's easement rights and the application of its regulations to Sorf's property.

Sorf's own proposed Counterclaim acknowledges that MWDSLS sought to impose the SLA easement restrictions and regulations upon Sorf prior to the entry of the Default Judgment. (*See* Counterclaim (Proposed) (R. 479 at ¶¶ 36-40) (attached as Add. 13.)) This should be obvious—without Sorf's violation of those restrictions and regulations, MWDSLS would have had no need to file the Complaint in the first place. Nonetheless, Sorf's allegations in the proposed Counterclaim tellingly blame not just the Default Judgment for his alleged inverse condemnation, but also (i.e., separately) MWDSLS's imposition of the restrictions and regulations on him. (*See id.* (R. 479.)) Sorf alleges that MWDSLS's restrictions and regulations “eliminated any economically viable use of his property,” and, most importantly, that they were an “addition[al]” cause of the default judgment. (R. 479 at ¶¶ 36-40 (emphasis added.)) He complains that an inverse condemnation has occurred “through the default judgment and the restrictions *and* regulations being imposed on Mr. Sorf's property, the character of the governmental actions, the economic impact of these actions on Mr. Sorf, and the extent to which the regulatory actions have interfered with Mr. Sorf's use and enjoyment of his property.” (R. 479-480 at ¶ 39 (emphasis added)). Thus, Sorf has acknowledged that his inverse condemnation counterclaim claim arose not merely from the default judgment, but also from (1) the “restrictions and regulations” imposed on Sorf, and (2) the “character of the governmental actions.” These “restrictions and regulations” and “governmental actions”

all occurred before the court below entered the Default Judgment against Sorf, and indeed before MWDSLs even filed suit.

Even if a judgment was needed for Sorf's inverse condemnation claim to mature, such a judgment existed as of December 13, 2010, when the district court entered the Default Judgment. (R. 99.) Nothing prevented Sorf from filing a proposed counterclaim with his Motion to Set Aside on January 28, 2011, but he filed no counterclaim at that time. (R. 104-112.) Nothing prevented Sorf from filing a proposed counterclaim along with his "[Proposed] Answer" on February 3, 2011, but he filed no counterclaim at that time either. (R. 122-134.) He did not try to file his counterclaim until April 14, 2011, a full four months after judgment was entered. (R. 374.)

Sorf's position is that "there was no taking . . . until the Default Judgment was finalized." (Appellant's Brief at 35.) Sorf uses the word "finalized" not because it is found anywhere in Rule 13(d), but because it implies that he was correct to wait until after MWDSLs Court denied his Motion to Set Aside to try and file his counterclaim. If attempts to undo a valid judgment prevent it from being "finalized," then Sorf's counterclaim is not ripe even to this day. "A Utah State court judgment is not final while an appeal is pending or until the time to appeal has expired." Chavez v. Morris, 566 F. Supp. 359, 360 (citing Young v. Hansen, 218 P.2d 674, 675 (Utah 1950)) (holding that "a judgment is not final pending appeal."). Thus by Sorf's reasoning, there is no taking, and his counterclaim is not ripe, until this Court affirms the denial of his motion to set aside the Default Judgment. This absurd result is the logical consequence of crediting Sorf's argument that he could not file his counterclaim until the Default was "finalized."

Sorf asserts that “multiple courts outside of Utah” have “consistently” supported his position, but cites only two cases from Colorado to support this assertion.

(Appellant’s Brief at 40-41.) The first case Sorf cites, *Droste v. Board of County Commissioners*, does not actually support his argument. As quoted by Sorf:

A taking claim is ripe if the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue, and determination whether a taking has occurred cannot be made until a court knows the extent of permitted development on the land in question.

85 P3d 585, 591 (Colo. App. 2003) (internal citations and quotations omitted). Here, MWDSLs did reach a “final decision regarding the application of the regulations to the property at issue,” and MWDSLs’s regulations for the SLA easement quite clearly delineate “the extent of permitted development on the land in question.” *Id.* The *Droste* appellants argued that the decision of a particular Colorado board of commissioners, which statutorily charged with deciding whether a taking had occurred, was unconstitutional. *Id.* at 590. However, at the same time the appellants were asking the Colorado Court of Appeals to decide that issue, a case was still pending in the trial court. *Id.* at 591. That is why the constitutional takings issue was not yet ripe for decision. *Id.*

The case of *Williams v. City of Central* is likewise inapposite. There, the property owner alleged that a temporary moratorium on gambling activities effected a regulatory taking of his property. However, the moratorium lasted only ten months, and the property owner was never denied a permit to conduct any economically viable activity on his property. That is why the court found that “his claim for inverse condemnation, to the

extent that it is based on a permanent regulatory taking, is not ripe for review.” 907 P.2d 701, 708 (Colo. App. 1995).

Sorf emphasizes a statement quoted in *Williams* that a “court cannot determine whether a regulation has ‘gone too far’ unless it knows how far the regulation goes.” *Reale Investments, Inc. v. City of Colorado Springs*, 856 P.2d 91 (Colo. App. 1993). But Sorf does not quote the next sentence in the *Reale* decision: “That effect cannot be measured until a final decision is made as to how the regulations will be applied to the property in question.” *Id.* A review of *Reale* quickly reveals that the court was not referring to itself with this passive-voice statement. Instead the court meant that the government entity’s actions—not a court judgment—were needed to ripen the inverse condemnation claim. *See id.* at 93-94.

In *Reale*, a developer had petitioned a city council for a change to the zoning ordinance governing his property. After the city council indicated it was not inclined to grant his rezoning request, he withdrew the request. *Id.* at 93. Because an inverse condemnation claim is “not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue,” the court found that the property owner’s inverse condemnation claim was not ripe. *Id.* at 94 (“Here, because Reale withdrew its zoning request, there has been no final decision.”).

In summary, the Colorado cases Sorf cites simply do not support the proposition that Sorf’s inverse condemnation claim did not ripen until the district court denied his motion to set aside the Default Judgment. To the contrary, they show that what is needed

is concrete action by a governmental entity to regulate the property owner's land in such a way as to deprive all useful benefit of it. All of the regulatory actions upon which Sorf would assert his claim for inverse condemnation had already occurred before MWDSLS ever filed its Verified Complaint. The district court therefore properly denied his Motion for Leave to File a Counterclaim.

**B. MWDSLS's Actions Do Not Give Rise to a Regulatory Taking Claim.**

A categorical regulatory taking requires, among other things, the application of a zoning law or other governmental regulation that denies all economically beneficial use of the land. *See, e.g., Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015-16 (1992); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). For a categorical taking to occur, the "whole parcel" must be deprived of all economically beneficial use. There is no taking if one portion of the parcel is deprived of economically beneficial use, but the remainder is not directly affected. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978). "Taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a single segment have been entirely abrogated." *Id.* at 130.

If a claimant cannot establish that his "whole parcel" has been deprived of all economically viable use, he must rely on the default multifactor takings test set forth in *Penn Central*. The United States Supreme Court identified the three factors as follows:

The [1] *economic impact* of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with [2] *distinct investment-backed expectations* are, of course, relevant considerations. [Citation omitted.] So, too, is [3] the *character of the governmental action*.

*Id.* at 124 (numbering added). For the reasons set forth below, MWDSLs's actions come nowhere close to depriving Sorf's "whole parcel" of all economically beneficial uses, nor can he show that the *Penn Central* factors, taken together, support his claim.

First, the SLA easement was established and recorded against what is now Sorf's lot in 1946. MWDSLs's property rights, including the SLA corridor, are held in trust for the public. MWDSLs is authorized by statute to promulgate regulations to protect the public's property rights, water infrastructure and MWDSLs operations. MWDSLs has studied the negative effects of load and fill cover levels on certain classes of SLA pipe. MWDSLs has also evaluated the effects of construction and installations on, and access to, the SLA and SLA corridor for maintenance, repair (including emergency repairs), and replacement of the SLA pipe. In these respects, MWDSLs brought this suit only because Sorf's new construction and excavations violated and encroached upon MWDSLs's SLA easement, and presented present and future risk to critical public water infrastructure and MWDSLs operations. Sorf claims that MWDSLs is "strangling homeowners with rules prohibiting all use of the easement area." (Appellant's Brief at 37.) This assertion is wrong on its face, as the whole purpose of the regulations is not to bar homeowners reasonable and appropriate use of the SLA corridor, but simply to ensure that activities on the easement do not jeopardize a pipeline that directly and indirectly provides crucial culinary water to some 500,000 people in the Salt Lake Valley.

Second, MWDSLs has plenary power to manage its assets held in trust for the public. See *Board of Educ. of Jordan School Dist. v. Sandy City*, 2004 UT 37, ¶ 31, 94 P.3d 234 (local governments have wide latitude in the operation and administration of

their utilities and assets to meet the challenges of urban growth, and therefore, the court should not substitute its judgment for that of the city council); Price Dev. Co. v. Orem City, 2000 UT 26, ¶¶10, 19, 995 P.2d 1237 (same); Utah Code Ann. § 17B-1-103(2)(d) (providing that local district may operate, control, and maintain public works to the full exercise of the district's powers, and "exercise any power reasonably necessary for the efficient operation of the local district"); *id.* at § 17B-1-301(2)(i) (empowering district to "adopt and enforce rules and regulations for the orderly operation of the local district or for carrying out the district's purposes"). Essentially, Sorf's counterclaim would wrongfully ask the district court to "second guess" regulatory acts of MWDSLs. *See, e.g., Jicarilla Apache Nation v. Rio Arriba County*, 440 F.3d 1202, 1209-10 (10<sup>th</sup> Cir. 2006). This offends concepts of separation of powers and is not supported under case law. *Id.*; *see also, Board of Educ., supra; Price Dev., supra; State v. Hutchinson*, 624 P.2d 1116 (Utah 1981); *SLC v. Allred*, 437 P. 2d 434 (Utah 1968).

Third, MWDSLs has done nothing to deny Sorf all economically beneficial uses of his land. The land was used as a moderately landscaped residential back yard before Sorf bought it, and Sorf continued to use it as such for over two decades. It quite evidently had economic value in that condition, because otherwise Sorf would not have purchased it. The suggestion that the land is somehow valueless because Sorf cannot make extensive additions—such as water features and buildings—is belied by the history of the property, and are contrary to common practice and common sense.

**C. Sorf's Motion Was an Improper Motion to Reconsider.**

The first procedural failing in Sorf's Motion for Leave to File a Counterclaim is that it was essentially a motion to reconsider the court's ruling on his Motion to Set Aside Default. Utah Courts are very clear that motions to reconsider, however they may be framed, are prohibited. Under the guise of an allegedly newly matured counterclaim, Sorf asked the district court to again look at the effect of MWDSL's easement and regulations on his violative improvements on his lot. (See Sorf's Reply Memo Set Aside at 3-13 (re: Meritorious Defense) (R. 289); Sorf's [Proposed] Answer at 1-2 (R. 122-134.)) Such efforts are explicitly prohibited by Utah courts. See *Tschaggeny v. Milbank Ins. Co.*, 2007 UT 37, ¶ 15, 163 P.3d 615 ("Motions to reconsider are not recognized by the Utah Rules of Civil Procedure."), citing *Gillett v. Price*, 2006 UT 24, ¶¶ 12, 135 P.3d 861 ("We therefore affirm the court of appeals and direct attorneys to immediately discontinue the practice of filing post judgment motions to reconsider.").

**D. Sorf Never Served a Pleading that Would Have Permitted Him to File a Counterclaim Under Rule 13(d).**

Sorf's Motion for Leave to file a counterclaim was founded on Rule 13(d), which provides that a movant may, with the permission of the court, file a counterclaim as a supplemental pleading, but only "after serving his pleading." Rule 13(d), Utah R. Civ. P. Sorf never "serv[ed] his pleading." That is why the Default Judgment was entered. Sorf's "[Proposed] Answer," which he filed as a supplement to his denied Motion to Set Aside, does not satisfy the "pleading" requirement of Rule 13(d). The district court denied Sorf's request for leave to file his Answer. Even if Sorf's "[Proposed] Answer"

did satisfy Rule 13(d), Sorf did not file his counterclaim with his “[Proposed] Answer.”

(R. 122-134). Rule 13(a) reads:

Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject-matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

Utah R. Civ. P. 13(a) (emphasis added). “[A] counterclaim not presented to the court on a matter involving the same transaction is forever barred.” Todaro v. Gardner, 285 P.2d 839, 842 (Utah 1955).

**E. Sorf Could Not Amend His Answer Because He Did Not Reopen the Default Judgment.**

Under National Advertising v. Murray City Corp., 2006 UT App. 75, 131 P.3d 872, Sorf was required to first reopen the judgment by motion before moving for leave and filing a counterclaim. Sorf failed in his efforts to accomplish this when the district court denied his motion to set aside the default judgment. His Motion for Leave to File a Counterclaim was not accompanied by a companion motion to reopen the judgment, nor did it even reference the applicable rules. (See R. 374-485.) As the Court in National Advertising stated:

In Utah, upon occurrence of “a final adjudication, and thereafter, a [party] may not file an amended complaint. [Instead, the party] must move under [r]ules 59(e) or 60(b) to reopen the judgment.” Nichols v. State, 554 P.2d 231, 232 (Utah 1976). Utah’s rule is consistent with federal court holdings under rules 59 and 60 of the Federal Rules of Civil Procedure. See Combs v. Price Waterhouse Coopers, 382 F.3d 1196, 1205 (10th Cir.2004) (“After a district court enters a final judgment . . . it may not entertain motions for leave to amend unless the court first sets aside or vacates the judgment pursuant to Fed.R.Civ.P. 59(e) or 60(b).”); see also Cooper v. Shumway,

780 F.2d 27, 29 (10th Cir. 1985) (per curiam) (“[O]nce judgment is entered the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to Fed.R.Civ.P. 59(e) or 60(b).” (citations omitted)).

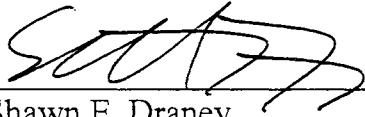
National Advertising, 2006 UT App 75, ¶ 13 (citations omitted).<sup>9</sup>

### **CONCLUSION**

For the reasons set forth above, MWDSLS respectfully requests that the district court’s rulings be affirmed as well within its discretion and correct as a matter of law.

DATED this 23<sup>rd</sup> day of December, 2011.

**SNOW, CHRISTENSEN & MARTINEAU**



Shawn E. Draney

Scott H. Martin

David F. Mull

Attorneys for Plaintiff MWDSLS

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<sup>9</sup> *National Advertising* was ultimately decided on the timeliness of Appellee’s Motion for Leave to Amend under Rules 59(e) and 60(b). 2006 UT App. 75, ¶ 26.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because:

X this brief contains 13,951 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B), or

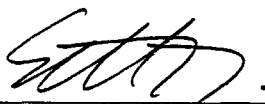
       this brief uses a monospaced typeface and contains                      lines of text, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

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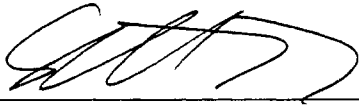
Attorneys for Appellee Metropolitan Water  
District of Salt Lake & Sandy

**CERTIFICATE OF SERVICE**

I state that I served the attached **BRIEF OF APPELLEE** upon the party listed below by placing two (2) true and correct copies thereof in an envelope and causing the same to be hand delivered and courtesy e-mailed to:

Paul Belnap  
Bradley Wm. Bowen  
Jennifer R. Carrizal  
STRONG & HANNI  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84111  
Attorneys for Zdenek Sorf

DATED this 23<sup>RD</sup> day of December, 2011.

  
\_\_\_\_\_

## ADDENDUM

1. MWDSLs Regulations, Chapter 16 – Regulation for Non-District Use of SLA
2. Process Server Return of Service
3. Declaration of Mel Ashton
4. Declaration of Deborah M. Wharff
5. DMW Memo re Call from Sorf
6. Declaration of Michael L. Wilson
7. Declaration of Wayne Winsor
8. Declaration of Ryan Nicholes
9. Application for Default Judgment
10. Order, signed March 17, 2011
11. Default Judgment with service notation
12. Easement Deeds
13. Counterclaim (Proposed)

## **ADDENDUM 1**

**CHAPTER 16**  
**REGULATIONS FOR NON-DISTRICT USE OF**  
**SALT LAKE AQUEDUCT AND**  
**POINT OF THE MOUNTAIN AQUEDUCT**  
**RIGHTS OF WAY**

Last Updated: June 14, 2010

*PREFACE*

*This chapter of the P&P contains regulations governing the use of the Salt Lake Aqueduct (SLA) and Point of the Mountain Aqueduct (POMA) rights of way, construction, excavation, removal and/or placement of materials, or other earth work, on SLA and POMA rights of way, and construction near enough to SLA and POMA rights of way to potentially adversely impact those rights of way, by persons or entities other than the District.*

**16-1 GENERAL BACKGROUND**

(1) SLA. The SLA is critical to the water supply of Salt Lake City's retail water service area, Sandy City's retail water service area, and other areas of Salt Lake County and Utah County. The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) designed and constructed the SLA under authority of the Reclamation Act of 1902 and the Public Works Administration Appropriation Act of 1938. Since 1938, the District has been responsible for the operation and maintenance of the SLA, has been repaying to the United States all costs incurred in constructing the SLA, and has been entitled to the use of the SLA. Pursuant to the Provo River Project Transfer Act, Pub.Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States, title to the SLA was transferred to the District on October 2, 2006.

(2) POMA. POMA is a pipeline and associated facilities constructed by the District to convey water to the District's member cities. The District owns POMA facilities and is responsible for the operation and maintenance of all POMA facilities. POMA is critical to the water supply of Salt Lake City's retail water service area, Sandy City's retail water service area, and other areas of Salt Lake County and Utah County.

(3) The intent of this Chapter is to provide guidelines and authorization to staff for the licensing of uses of District corridors. Licenses should reasonably accommodate other uses of District corridors so long as it is clear that such uses will not materially interfere with the District's interests in the use, operation, maintenance, repair and replacement of District facilities. Except as otherwise directed by the Board, fees for

licenses should be reasonably calculated to generally recover direct and indirect District costs associated with evaluating, approving, and administering such licenses. The Engineering Committee or Board may authorize licenses in addition to those the staff is authorized to issue by this chapter, or make exceptions to the regulations, where doing so would serve the interests of the District and the public.

## 16-2 GENERAL INTENT OF REGULATIONS

(1) District Assumption of Reclamation Agreements. Reclamation has historically provided, by agreement, underlying fee owners, adjoining landowners, and others, the right to use portions of the SLA right of way pursuant to 43 United States Code, Section 387; 43 Code of Federal Regulations, Part 429, and Reclamation Manual/Directives and Standards LND 08-01. As a condition of title transfer, the District assumes all of the rights and responsibilities of Reclamation under validly existing Reclamation agreements for use of the SLA right of way.

(2) District's Proprietary and Regulatory Interests. Portions of the SLA and POMA rights of way are held in fee, and portions are held under easement. Portions of the POMA right of way are located under roads or city parks pursuant to license or franchise agreements. The application of these regulations will necessarily vary depending upon the nature of the ownership interest of the District. Regardless of the nature of the District's ownership interest in the right of way, the District has regulatory authority as a subdivision of the State of Utah to protect District facilities.

(3) Fair Market Value of Use of District Fee Lands. The District is generally obligated by state law to charge fair market value for use of fee lands. *E.g., Salt Lake Co. Comm'n v. Salt Lake Co. Attorney*, 985 P.2d 899 (Utah 1999); *Municipal Building Authority of Iron Co. v. Lowder*, 711 P.2d 273 (Utah 1985); *Sears v. Ogden City*, 533 P.2d 118 (Utah 1975). The District's policy is that it will make reasonable efforts to comply with this requirement, and also reasonably recover the estimated actual costs to the District of processing and administering Encroachment Agreements, but will otherwise attempt to minimize charges.

(4) SLA Rights Reserved by the United States. Pursuant to the Provo River Project Transfer Act, Pub.Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States, the United States transferred the title of the SLA to the District and the United States reserved an easement for the continued, lawful, non-motorized public access across the SLA to adjacent public lands. The United States also reserved an easement for Central Utah Project facilities within Utah County. All uses of the SLA right of way are subject to these easements. The District's General Manager may deny a new or renewed encroachment agreement if the District or other agency has any outstanding encroachment issues with the applicant or related persons or entities.

(5) Security. The SLA and POMA are critical public infrastructure, and as such the use of SLA and POMA rights of way will be subject to federal, state, local and District statutes, regulations, rules, ordinances, policies and procedures designed to protect public health, safety and welfare.

(6) Non-motorized Public Trail Development. The District believes that public, non-motorized recreational trail use of portions of the SLA and POMA rights of way can be developed in a manner that does not adversely impact the security of the SLA or POMA, and does not adversely impact the District's ability to use, operate, repair, inspect, maintain or improve SLA or POMA facilities. The District may allow such recreational trail development.

(7) Non-licensed Encroachments. The District may periodically review its rights of way to identify non-licensed encroachments. The District may take action to remove such encroachments or bring encroachments in compliance with these regulations, including payment of all required fees and charges as applicable.

### 16-3 DEFINITIONS

(1) "Applicant" - A person or entity who applies for issuance of an Encroachment Agreement by the District.

(2) "District" - The Metropolitan Water District of Salt Lake & Sandy.

(3) "Encroachment Agreement" - The Agreement issued to a Grantee who has successfully completed the application process.

(4) "Grantee" - The person or entity applying for and receiving an Encroachment Agreement from the District for use of SLA or POMA rights of way. Any reference in these regulations to "Grantee" should also be interpreted as referring to Grantee's contractors, subcontractors, employees, agents or representatives.

(5) "Hazardous Materials" include:

(a) Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq., and the regulations promulgated pursuant to such statutes.

(b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the United States

Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto).

(c) Such other substances, materials and wastes which are or become regulated or which are classified as hazardous or toxic under federal, state, or local laws, statutes, ordinances or regulations. This does not include public sewers.

(6) "POMA" or "Point of the Mountain Aqueduct" - A large transmission pipeline that provides municipal and industrial water to the District's member cities. The District owns, operates and maintains POMA.

(7) "Reclamation" or "Bureau of Reclamation" - A bureau of the United States Department of the Interior that designed and constructed the SLA and originally held title to the SLA.

(8) "SLA" or "Salt Lake Aqueduct" - The SLA is a large transmission pipeline that provides municipal and industrial water to the District's member cities. Title to the SLA was transferred to the District on October 2, 2006 pursuant to the Provo River Project Transfer Act, Pub. Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States.

#### **16-4 WRITTEN ENCROACHMENT AGREEMENT REQUIRED**

(1) Vehicle Access. Except where SLA or POMA is located under a validly existing public road, street or highway, a valid Encroachment Agreement is required for any vehicle access on or over the SLA or POMA. Weight restrictions for SLA and POMA pipe must be strictly observed.

(2) Excavation, Earthwork, Construction, Etc. Any excavation, removal of material, placement of material or other earth work, or construction work on SLA or POMA rights of way where the District holds fee title or easement requires a valid Encroachment Agreement.

(3) Improvements to Previously Approved Encroachments. Any improvement to a previously approved encroachment on District rights of way requires a new Encroachment Agreement.

(4) Form of Encroachment Agreement. Encroachment Agreements shall be specifically tailored to reflect the proposed use by the Grantee and, therefore, may contain terms, conditions and/or limitations that are not reflected in previous or sample Encroachment Agreements. The District's General Manager is authorized to execute Encroachment Agreements that are consistent with these regulations and applicable law on behalf of the District. All activities conducted on SLA or POMA rights of way

pursuant to an Encroachment Agreement shall be in strict conformity with these regulations.

(5) Encroachment Agreement Time Periods. The Encroachment Agreement is valid for the time period specified in the Encroachment Agreement. The maximum time period for an Encroachment Agreement is 25 years if the Encroachment Agreement is issued to a public agency or utility. If the Encroachment Agreement is issued to a private organization or home owner, the maximum time period is 15 years.

(6) Encroachment Agreement Renewal. At the end of the effective time period, the Grantee shall remove the encroaching facility or renew the Encroachment Agreement. The Grantee shall pay all required fees and charges as applicable to renew the Encroachment Agreement.

(7) Grantees Responsible for Employees, Contractors. Grantees are strictly liable for failure of their employees, agents, contractors or subcontractors to perform in strict conformity with the Encroachment Agreement and these regulations.

(8) Public Use of District Rights of Way. Use of District rights of way by the public will not be permitted without a separate easement agreement requested by the Grantee and granted by the District prior to issuance of the Encroachment Agreement.

## **16-5 APPLICATION PROCEDURES, FEES**

The District's General Manager is authorized to develop application forms, instructions, and procedures to guide the Grantee through the application process. The District's Board of Trustees shall adopt a fee schedule for application fees, processing fees, right of use fees, and any other fees consistent with these regulations. The Board may delegate to the General Manager the ability to establish appropriate fees for use of fee title lands. Fees for use of fee title lands may be waived in whole or in part by the General Manager to the extent that the licensed use is determined to be beneficial to the District (e.g., landscaping is developed and maintained by others).

## **16-6 GENERAL REQUIREMENTS**

(1) Service Interruption. The SLA and POMA are pipelines that remain in service year-round and are critical to the water supply of hundreds of thousands of people. Service interruptions of either the SLA or POMA must be expressly authorized by the District's General Manager, and are not permitted except in very extraordinary circumstances. Unauthorized interruptions to pipeline service of the SLA or POMA will not be tolerated and could result in the responsible party paying any and all incidental and consequential damages including, but not limited to:

- (a) Lost revenue from water sales;

- (b) Engineering personnel time;
- (c) Operation and maintenance personnel time;
- (d) All costs required to return the affected pipeline back to its full service capacity;
- (e) Any costs incurred by the District's member cities that are over and above the normal costs associated with the affected pipeline;
- (f) The value of the water which could not be used due to the interruption; and
- (g) Third party claims tied to lack of water.

**Unauthorized interruptions of service will likely result in criminal and civil actions, particularly if determined to be willful or negligent. The District will participate in, and direct vigorous enforcement activities against, any persons who cause, or who are associated with causing, any unauthorized interruptions in service of the SLA or POMA.**

(2) Contamination of Water Supply. Water conveyed by the SLA and POMA is used in a municipal and industrial water supply. The Grantee shall not introduce pollutants or place foreign materials of any kind in water conveyance facilities. In the event of a hazardous material spill, or if there is any release of materials into the water that may affect the operation of the SLA or POMA, the Grantee shall notify the District immediately.

(3) Prior Notice

(a) Following the issuance of an Encroachment Agreement, the Grantee shall invite the District to any Pre-Construction Meeting.

(b) The Grantee shall contact the District either in writing or by phone at least one week in advance of any planned test excavation or construction activities within District rights of way.

(4) Construction Activities

(a) The Grantee shall designate a representative for field operations who shall be the sole representative of the Grantee and the Grantee's contractors in dealings with the District, and shall provide their name, address, and telephone number to the District prior to commencement of construction.

(b) The Grantee shall limit its construction to the approved encroaching facilities and construct the improvements strictly in accordance with the approved plans or specifications.

(c) The Grantee shall notify the District upon completion of construction.

(d) Within sixty (60) days after conclusion of construction operations, all construction materials and related litter and debris, including vegetative cover accumulated through land clearing, shall be disposed of in an appropriate manner.

(5) Storage of Equipment or Materials. Equipment or materials shall not be stored on access roads, or other access areas, unless specific written approval is given by the District. All persons or entities using access roads shall coordinate with the District to allow District personnel access to any access roads.

(6) Hazardous Materials, Pesticides, Pollutants

(a) Storage, handling, use, or transportation of hazardous materials is strictly forbidden on or adjacent to any District right of way without the prior written permission of the District. All state, federal and local statutes, rules, regulations and ordinances concerning the use of hazardous materials, insecticides, herbicides, fungicides, rodenticides, and other similar substances shall be strictly observed.

(b) Prior to the use of hazardous materials, insecticides, herbicides, fungicides, rodenticides, and other similar substances on or adjacent to District rights of way, the Grantee shall obtain, from the District, approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application, and such other information as may be required. All use of such substances on or near the District rights of way shall be in accordance with the approved plan. If the use of a substance is prohibited by the Environmental Protection Agency, it shall not be used. If use of a substance is limited by the Environmental Protection Agency, it shall be used only in accordance with that limitation.

(7) Vegetation, Restoration and Reseeding

(a) Except as otherwise agreed by the District in writing, ground surfaces within District rights of way must be restored to a condition equal to that which existed before the encroachment work began, or as shown on the approved plans or specifications.

(b) The Grantee shall exercise care to preserve the natural landscape and shall conduct its construction operation so as to prevent any unnecessary destruction,

scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage that may be caused by the Grantee's construction operations and equipment unless otherwise directed by the District. Movement of crews and equipment within the rights of way and over routes provided for access to the work shall be performed in a manner to prevent damage to roadways, grazing land, crops, or property.

(c) Plans for restoration of District rights of way areas where soils and surface materials are disturbed through actions incident to construction, operation, and maintenance shall be approved by the District.

(d) The Grantee shall be responsible for prevention and suppression of all uncontrolled fires that are caused by the Grantee, its agents, or assigns. The Grantee shall be responsible for restoration of damaged areas.

(8) Damage to District Facilities. All damage to District facilities shall be repaired by the Grantee to the satisfaction of the District. If emergency repair work is necessary, or the Grantee fails to complete all work covered by the applicable agreement with the District in a reasonable time as determined by the District, any remaining or incomplete work will be performed by the District and the Grantee will be required to reimburse the District for all expenses incurred by the District in completing the work.

(9) Unanticipated Conditions. If unanticipated field conditions are encountered while a project is being undertaken, the District reserves the right to impose additional or more stringent requirements than may be generally described in this Chapter 16. The District may also issue a written amendment to the Encroachment Agreement.

(10) Record Drawings. Within 30 days of completion of construction, the Grantee shall provide to the District three (3) copies of record drawings. The record drawings shall include, but not be limited to, X,Y,Z, GPS coordinates of District facilities, utility crossings, manholes, drains, power poles, etc. A topographic survey shall be completed to document any changes to grade. Electronic files of record drawings shall be submitted to the District in a format acceptable to the District.

## 16-7 PROTECTION STANDARDS

### (1) Surface Structures

(a) Surface structures are allowed within District rights of way so long as construction and use of those surface structures do not alter or interfere with the use, operation, maintenance, repair, replacement or improvement of any District facilities. Approved surface structures include asphalt roadways (without utilities), parking lots,

curbs, gutters, sidewalks, walkways, driveways and patios that are non-reinforced and not connected to buildings. All surface structures are subject to approval by the District on an individual basis.

(b) Surface structures located over District pipelines shall be designed to meet maximum allowable loading restrictions and minimum cover requirements as determined by the District.

(c) Except as otherwise expressly agreed in writing by the District, if the District determines that it is necessary to remove or damage surface structures for the use, operation, maintenance, repair, replacement, or improvement of any District facilities, repair or replacement of the removed or damaged surface structures will be the responsibility of the Grantee and its successors.

(2) Buildings, Other Structures. Buildings and other permanent structures are not allowed to be constructed within or overhanging District rights of way. The following types of structures are not allowed: buildings, footings, foundations, retaining walls, block or concrete slab walls, decks, carports, trailers, light poles, flag poles, trampolines, motor cross facilities, power poles, swimming pools, wading pools or ponds, decorative pools or ponds, or similar water features. Other types of permanent structures not listed will be evaluated by the District for approval.

(3) Vehicle Access Weight Restrictions

(a) No vehicular traffic will be allowed over Type A SLA pipe unless adequate protection is provided and specifications approved by the District. No vehicular traffic exceeding HS-20 loading will be allowed over Type B, C, and D SLA pipe unless adequate protection is provided and specifications approved by the District.

(b) No vehicular traffic exceeding HS-20 loading will be allowed over the POMA unless adequate protection is provided and specifications approved by the District.

(4) Reasonable and Efficient District Access

(a) The District shall have reasonable and efficient access to all portions of District rights of way and facilities. No fences or similar barrier will be allowed within District rights of way except as consistent with these regulations.

(b) Except for District purposes, installation of new or replacement fences is not allowed on District fee title property. Existing fences, previously authorized by agreement prior to October 2, 2006, on or across District fee title property may, by agreement, remain until District activities require removal. Other uses of District fee title property will be allowed as set forth in other sections of this chapter of the P&P. Fences

without footings or foundations may be allowed on property encumbered by District easements on a case by case basis. Concrete walls and masonry block walls will not be allowed. Grantee shall permit reasonable and efficient access to enclosed portions of District rights of way.

(c) Fences enclosing District structures or rights of way shall provide gated openings large enough to permit reasonable and efficient access by District maintenance vehicles without damaging the fence and improvements of the District rights of way user. Grantee shall allow District to install District locks on access gates.

(d) All fences within District rights of way are subject to removal by District as required to maintain or replace pipe or structures. Except as otherwise expressly agreed in writing by the District, removal and replacement of fences shall be the responsibility of the Grantee and its successors.

(5) Trees and Vines

(a) No new trees or vines will be allowed within District rights of way. Existing trees and vines within 20 feet of centerline of District pipelines or on access paths and roads used by District are not allowed. Existing trees and vines outside 20 feet of centerline of District pipelines or on access paths and roads used by District may remain until removal is required for safe operation or replacement of the pipeline or access paths and roads at the sole discretion of the District.

(b) All vegetation within the District rights of way shall be maintained by the property owner or Grantee, as the case may be. All vegetation within District rights of way is subject to removal by District as required to maintain or replace pipe or structures. Except as otherwise expressly agreed in writing by the District, removal and replacement of vegetation shall be the responsibility of the Grantee and its successors.

(6) Changes in Ground Surfaces, Lateral Support

(a) All temporary or permanent changes in ground surfaces within District rights of way are encroaching structures and require an encroachment agreement. Grantee is required to comply with District requirements for minimum and maximum depths of cover over the SLA and POMA.

(b) Any fills and cuts on properties adjacent to District rights of way shall not encroach onto District rights of way without specific written prior approval by the District. Modifications of properties adjacent to District rights of way shall not reduce lateral support for District rights of way without specific written prior approval by the District.

(7) Drainage From or Onto District Rights of Way. Existing gravity drainage over and from District rights of way must be maintained at all times. Any erosion from construction, operation, maintenance or use activities must be controlled at all times. No new concentration of surface or subsurface drainage may be directed onto or under the District rights of way without a showing of adequate provisions for removal of drainage water, and the specific prior written approval of the District.

(8) Test Excavation. Prior to final design of any structure that encroaches within District rights of way, an excavation must be made to determine the location of existing District facilities. Any such excavation must be made only by, or in the presence of, authorized District personnel.

(9) Bedding for pipe or other District facilities. Compaction. Grantee is required to comply with District requirement related to bedding of pipe and other District facilities and compaction requirements.

(10) Metallic Strip. Any nonmetallic encroaching structure below ground level shall be accompanied with an approved locator wire running through the entire length of the District right of way.

(11) Utility Crossings

(a) Utility crossings of District rights of way will require an encroachment agreement on an individual basis. All applicable state, city, and county regulations shall be adhered to in the construction of utilities. Where utilities will be constructed by or for a developer, but dedicated to a municipality or other local governmental entity or regulated public utility, the District will require the Encroachment Agreement to be signed by that municipality or other local governmental entity or regulated public utility.

(b) All utility crossings shall provide a minimum of eighteen (18) inches of clearance between pipeline or conduit and the SLA or POMA. All sewer lines shall be installed in a carrier pipe extending a minimum of 25 feet each side of SLA or POMA centerline, as directed by the District. All culinary pipeline crossings under the SLA or POMA shall be installed in a carrier pipe extending a minimum of 25 feet each side of SLA or POMA centerline, as directed by the District. Carrier pipes shall consist of either welded steel pipe or welded HDPE. Coating, lining and thickness of carrier pipes shall be approved by the District.

(c) Angles of crossing utilities shall be 90 degrees in relation to the SLA or POMA whenever practicable, and not less than 60 degrees. Parallel utilities are not allowed within District rights of way.

(d) Metal pipes which are in close proximity to and may affect District pipelines shall implement corrosion protection measures that provide adequate protection of the District's pipelines.

(e) Boring of utility crossings may be required by the District. Decisions will be made on an individual basis.

(f) If material from the excavation is not suitable as backfill, it shall be removed from the site by and at the expense of the Grantee.

(g) Any buried utility shall be accompanied with warning tape. This tape shall be located 12 inches above the structure and extend from right of way edge to right of way edge.

## **16-8 APPEALS**

Any decision of the General Manager regarding District rights of way may be appealed to the Engineering Committee. All appeals shall be in writing explaining the reasons for the appeal. In order for appeals to be considered by the Engineering Committee, the written appeal must be received within 30 days following receipt of the decision of the General Manager and at least 10 business days prior to the next scheduled Engineering Committee meeting. Replies will be answered in writing. Any decision of the Engineering Committee regarding District rights of way may be appealed to the District's Board of Trustees. All appeals shall be in writing explaining the reasons for the appeal. In order for appeals to be considered by the District's Board of Trustees, the written appeal must be received within 30 days following receipt of the decision of the Engineering Committee and at least 10 business days prior to the next scheduled Board of Trustees meeting. Replies will be answered in writing.

## **ADDENDUM 2**

4

**PROOF OF SERVICE**

FILED  
DISTRICT COURT

10 NOV - 1 AM 10:37

THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY

THIRD JUDICIAL DISTRICT COURT

SALT LAKE DEPARTMENT, UTAH

)  
)  
)  
CASE NO: 100921025

DEPUTY CLERK

I, Mel B. Ashton hereby certify under the penalties of perjury and in accordance with the provisions set forth by the State of Utah, Section 78B-5-705 the following:

I am a citizen of the United States over the age of 18 years at the time of service herein, and am not a party to or have an interest in the within action.

I received the attached SUMMONS, COMPLAINT, EXHIBITS AND LETER on October 28, 2010 and served the same on October 28, 2010 at 5:40 p.m. on Zdenek Sorf, by serving his wife, Mrs. Sorf at 9825 South Mount Jordan Road, Sandy, Utah 84092. The woman answering the door said that Zdenek wasn't home. I asked if she was his wife and she said "yes". I told her I had a complaint and that I was serving her for Zdenek. She said that she wouldn't take it and I dropped it on the floor inside the door of the house and walked away. She picked up the papers and threw them at me and they landed in the driveway. Mrs. Sorf is a white female about 5' 5" tall, 115 pounds, brown shoulder length hair and about 45 years old.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

I further certify that at the time of service I endorsed the date and time of service and added my name thereto.

Dated this 29<sup>th</sup> day of October, 2010

*Mel B. Ashton*

Mel B. Ashton, DPS License P100001  
A. A. & Associates, Inc.  
P.O. Box 964  
Sandy, Utah 84091

## **ADDENDUM 3**

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY,

Plaintiff,

v.

ZDENEK SORF,

Defendant.

)  
)  
) **DECLARATION OF**  
) **MEL ASHTON**  
)  
)

) Civil No. 100921025  
)

) Judge Joseph C. Fratto, Jr.  
)  
)

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

MEL ASHTON, being first duly sworn, deposes and states that:

1. I am over the age of 21 years and have personal knowledge of the facts stated in this declaration.

2. I am currently working as a certified process server and investigator licensed by the Utah Department of Public Safety. I am a retired agent for the United States Drug Enforcement Administration, having worked with them for 20 years, and I was a police officer for Salt Lake City for 8 years before my employment with the DEA.

3. On October 28, 2010, having been tasked with service of process of Summons and Complaint on the defendant, Zdenek Sorf, I went to his home located at 9625 South Mount Jordan Road in Sandy, Utah at 5:40 p.m. I rang the doorbell and a woman opened the door. She was an adult who appeared well over the age of 21 years. There was another female who appeared to be in her early teens standing behind the woman and they were smiling.

4. I asked the woman if Zdenek Sorf was home and she responded: "He's not home right now." I asked the woman if she was his wife, and she responded "Yes."

5. I told the woman that I had a complaint that I was leaving with her for Zdenek Sorf and she said she would not take it. I dropped the Summons and Complaint inside the door at her feet and told her that she was served. She slammed the door. As I was walking back to my car, she opened the door and threw the Summons and Complaint at me and they landed in the driveway.

6. I prepared the return of service of the Summons and Complaint, indicating that I served Mr. Sorf's wife based on her representation that she was, indeed, his wife.

7. On December 23, 2010, I was tasked with service on the defendant of the Notice of Default Judgment. I once again traveled to the residence at 9625 South Mount Jordan Road in Sandy at 1:09 p.m.

8. I rang the doorbell and the same woman answered the door. I said "Mrs. Sorf?" and she said "Yes." I showed her the documents and she said "No" and slammed the door. I said in a loud voice to be heard through the door that she had been served, and that the documents were being left in the door. I left the documents and went back to my car.

9. At the time of service of both sets of documents, the same woman answered the door and on both occasions she represented herself as the defendant's wife.

DATED this 4<sup>th</sup> day of February, 2010.

Mel Ashton  
Mel Ashton

SUBSCRIBED and sworn to before me on this 4<sup>th</sup> day of February, 2010.

Taunya L. Ashton  
NOTARY PUBLIC



1651278

## **ADDENDUM 4**

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY,

Plaintiff,

V.

ZDENEK SORF,

Defendant.

**DECLARATION OF  
DEBORAH M. WHARFF**

Civil No. 100921025

Judge Joseph C. Fratto, Jr.

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

DEBORAH M. WHARFF, being first duly sworn, deposes and states that:

1. I am over the age of 21 years and have personal knowledge of the facts stated in this declaration.

2. I am a paralegal at the law firm of Snow, Christensen & Martineau, where I have

been employed for 14 years.

3. In September, 2010, I was asked to review the state and federal court dockets for prior law suits against the defendant in this matter, Zdenek Sorf. A state wide search revealed Mr. Sorf as a named party in 28 suits, and in 27 of those 28 suits, Mr. Sorf is a defendant. A copy of a printout dated February 3, 2011 is attached as Exhibit A. The information contained in Exhibit A is the same information reviewed in September, 2010, with the exception of the addition of the instant case.

4. From those actions identified on Exhibit A, I went to the dockets for the various cases. 15 of the action identified on Exhibit A are tax liens filed for failure to pay taxes either personally or for sales or other tax obligations of CNS Machine or Cruzrs Salon, Mr. Sorf's business interests. There are both criminal and civil matters and several of the dockets from these matters are attached at Exhibit B.

5. The dockets at Exhibit B illustrate Mr. Sorf's extensive experience with the court systems:

A. Case 011903461: Mr. Sorf was arrested on 3-5-01 for disturbing the peace and trespass. He failed to appear for arraignment and a bench warrant issued. He finally appeared and eventually there was a bench trial. He was fined and given 1 year probation.

B. Case 014905627: In this divorce action Mr. Sorf was represented by James McPhie. Personal service was achieved on his spouse, and he answered the complaint in a timely manner. Mr. Sorf failed to pay support in subsequent orders to show cause was eventually held in contempt by the court with judgment entered that was eventually satisfied.

C. Case 020100793: In this collection case Mr. Sorf was personally served on 1-18-02. He failed to file an answer and default judgment was taken on 2-12-02. Supplemental order issued and garnishments were served until eventual satisfaction of the judgment.

D. Case 040400428: In this matter, Mr. Sorf was served as doing business as CNC Machine & Design. The agent (not Mr. Sorf) was served. No answer was filed and default judgment was taken. A supplemental order issued and Mr. Sorf failed to appear, causing an order to show cause to issue. Judgment was satisfied 6 months later.

E. Case 056917406: This Labor Commission matter had an administrative judgment entered. A writ of garnishment and supplemental order issued on the account of Mr. Sorf's business, CNC Machine. No one appeared for the defendant. A Writ of Execution eventually issued and within 2 weeks, judgment was satisfied.

F. Case 080904887: Workforce Services sued Mr. Sorf and his business, CNC Machine. It appears that an administrative case was filed. Mr. Sorf was served with an Order Enforcing Subpoena. An Order to Show Cause issued and was objected to by Mr. Sorf's attorney, Bradley Wm. Bowen. This matter was dismissed.

G. Case 081904729: This criminal matter involved a false information charge against Mr. Sorf, who used the name Wayne Frank Barbuto, an individual whose address is listed on the same street as Mr. Sorf's, as well as charges of operating a vehicle without insurance and driving on a denied license. An arraignment was scheduled and Mr. Sorf failed to appear. There is a \$5000 warrant currently outstanding according to the docket.

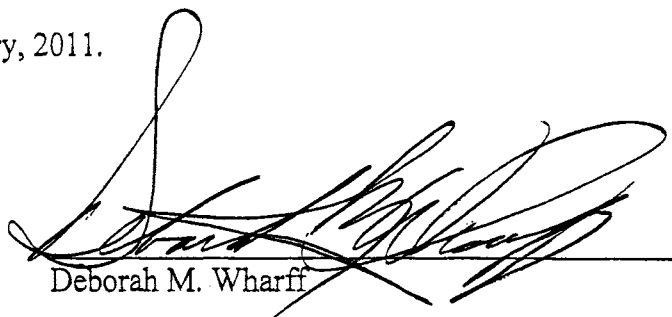
6. In September, 2010, I also entered Mr. Sorf's name into the Corporations Division search engine to determine his business interests, if any. A copy of a current printout of that information is attached at Exhibit C. Mr. Sorf is listed as an officer, director, or registered agent of the following business interests:

- A. Wasatch Front Entertainment, Inc.
- B. Sorf & Miller, Inc.
- C. Cruzrs Saloon, Inc.
- D. Evans and Sorf, LLC.
- E. CNC Machine and Design, Inc.

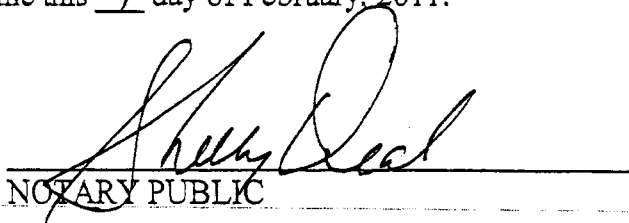
7. On November 22<sup>nd</sup>, 2010, I was asked to attend a telephone conference with Shawn Draney and Mr. Sorf. Mr. Sorf acknowledged service of the Summons and Complaint and asked what could be done to solve the problem. Mr. Draney indicated that Mr. Sorf should call District representatives who stood ready and willing to talk to him. Mr. Draney informed Mr. Sorf that we intended to file a default certificate with the court in that he had failed to answer the complaint. Mr. Draney explained to Mr. Sorf why the additional soil he had piled on top of the Aqueduct pipe was a problem. Mr. Draney reiterated that the District had been trying to work with him to solve the problem, but that he had failed to respond or to cooperate, forcing the District to file the complaint. Mr. Draney indicated the District would still be willing to talk to him, and provided telephone numbers for the General Manager and the Assistant General Manager. When the telephone conference was completed, I immediately prepared a memorandum to the file to memorialize the date and general content. A copy of that

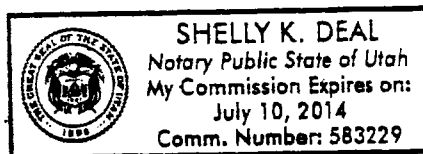
memorandum is attached at Exhibit D.

DATED this 7<sup>th</sup> day of February, 2011.

  
Deborah M. Wharff

SUBSCRIBED and sworn to before me this 7 day of February, 2011.

  
NOTARY PUBLIC



1649855

## **ADDENDUM 5**

SNOW, CHRISTENSEN & MARTINEAU

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**MEMORANDUM**

To: *Sorf File*

From: *DMW*

Date: *November 22, 2010*

Subject: *Call from Sorf*

---

Shawn received a telephone call today from Mr. Sorf. I was asked to attend to confirm the content of the conversation.

Mr. Sorf asked "what can we do?" Shawn indicated that he needed to call Wayne or Mike and set up a meeting with them. In the meantime, we are going to enter a default certificate with the court as his time to answer had lapsed. Shawn indicated that Sorf could talk with the District or hire counsel and that Shawn could talk to counsel.

Sorf said that all he did was "improve the lot". Shawn explained that the pipe was rated for a certain weight and that when you piled soil on top the weight was exceeded and threatened the water supply of about a half-million people. Sorf claimed he had tried to contact District representatives.

Shawn gave Sorf the telephone numbers of both Wayne Winsor and Mike Wilson and Sorf thanked him and hung up.

## **ADDENDUM 6**

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY,

Plaintiff,

Y.

ZDENEK SORF,

Defendant.

**DECLARATION OF MICHAEL L. WILSON**

Civil No. 100921025

Judge Joseph C. Fratto, Jr.

## DECLARATION

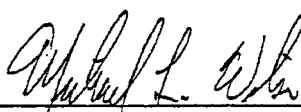
MICHAEL L. WILSON, states as follows:

1. I am over the age of 21 years and have personal knowledge of the facts stated in this declaration.
2. I am the General Manager of the Metropolitan Water District of Salt Lake & Sandy.

3. I have never received a telephone call or a voice mail from Mr. Zdenek Sorf.

I declare under criminal penalty of the State of Utah that the foregoing Declaration is true and correct.

EXECUTED this 7<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
Michael L. Wilson

1652307

## **ADDENDUM 7**

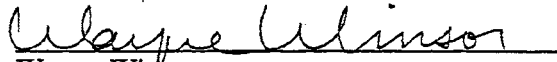
IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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Machine-generated OCR, may contain errors.

3. I have never received a telephone call or a voice mail from Mr. Zdenek Sorf.

I declare under criminal penalty of the State of Utah that the foregoing Declaration is true and correct.

EXECUTED this 7 day of February, 2010.

  
Wayne Winsor

1652312

## **ADDENDUM 8**

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY,

Plaintiff,

V.

ZDENEK SORF,

Defendant.

# DECLARATION OF RYAN NICHOLS

Civil No. 100921025

Judge Joseph C. Fratto, Jr.

STATE OF UTAH

: SS.

COUNTY OF SALT LAKE )

RYAN NICHOLS, being first duly sworn, deposes and states that:

1. I am over the age of 21 years and have personal knowledge of the facts stated in this declaration.

2. I am the IT Supervisor at the Metropolitan Water District of Salt Lake & Sandy

("MWDSLS") and have been since February, 2003.

3. On February 1<sup>st</sup>, 2011, I was asked to determine what records might be available evidencing telephone calls received by MWDSLS from 801-301-1160 or 801-531-9944, the telephone numbers provided to MWDSLS personnel by the plaintiff. I checked all incoming telephone calls as far back as the systems would allow, between December 3, 2010 through January 31, 2011, and found neither of the plaintiff's telephone numbers in the 138 pages of calls received by MWDSLS during that time period.

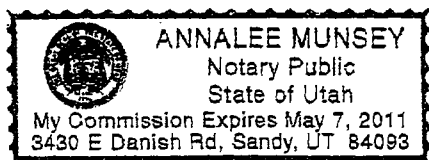
4. I was able to document all incoming calls to all MWDSLS telephone lines, including MWDSLS' General Manager, Michael Wilson, and MWDSLS' Engineering Manager, Wayne Winsor, whose telephone numbers had been provided to the plaintiff. A printout of the call information with regard to Mr. Wilson's telephone line ("631") is attached at Exhibit A. A printout of that call information to Mr. Winsor's telephone line ("685") is attached at Exhibit B.

5. I found no incoming calls from the numbers provided by the plaintiff from December 3, 2010 to January 31, 2011, whether to the MWDSLS systems generally, or to the General Manager or the Engineering Manager's telephone lines.

DATED this 7 day of February, 2011.

  
Ryan Nicholes

SUBSCRIBED and sworn to before me this 7 day of February, 2011.




  
NOTARY PUBLIC

Exhibit 7-A

iteTimeOrigination	Time Stamp	callingPartyNumber	originalCalledPartyNumber	finalCalledPartyNumber	dateTimeConnect	Connect Time Stamp	dateTimeDisconnect	Disconnect Time Stamp	lastRedirectDn
1291656035	12/6/10 10:20 AM	8014952224	685	685	1291656039	12/6/10 10:20 AM	1291656086	12/6/10 10:21 AM	685
1291663697	12/6/10 12:28 PM	7051	685	685	0	12/31/89 5:00 PM	1291663697	12/6/10 12:28 PM	685
1291663697	12/6/10 12:28 PM	2124384339	685	7050	1291663718	12/6/10 12:28 PM	1291663784	12/6/10 12:29 PM	685
1291665239	12/6/10 12:53 PM	8015219000	685	685	1291665245	12/6/10 12:54 PM	1291666141	12/6/10 1:09 PM	685
1291668361	12/6/10 1:46 PM	8016522630	685	7050	1291668382	12/6/10 1:46 PM	1291668392	12/6/10 1:46 PM	685
1291756106	12/7/10 2:08 PM	8012547904	685	7050	1291756127	12/7/10 2:08 PM	1291756138	12/7/10 2:08 PM	685
1291834572	12/8/10 11:56 AM	8017968770	685	7050	1291834599	12/8/10 11:56 AM	1291834642	12/8/10 11:57 AM	685
1291838259	12/8/10 12:57 PM	8017968770	685	7050	1291838272	12/8/10 12:57 PM	1291838311	12/8/10 12:58 PM	685
1291847269	12/8/10 3:27 PM	8014847556	685	685	1291847277	12/8/10 3:27 PM	1291847328	12/8/10 3:28 PM	685
1291919443	12/9/10 11:30 AM	623	685	685	0	12/31/89 5:00 PM	1291919461	12/9/10 11:31 AM	685
1291996033	12/10/10 8:47 AM	7051	685	685	0	12/31/89 5:00 PM	1291996094	12/10/10 8:47 AM	685
1291996034	12/10/10 8:47 AM		685	685	1291996045	12/10/10 8:47 AM	1291996152	12/10/10 8:49 AM	7050
1292009600	12/10/10 12:33 PM	8012301339	685	685	1292009604	12/10/10 12:33 PM	1292010125	12/10/10 12:42 PM	685
1292258723	12/13/10 9:45 AM	8014847556	685	7050	1292258743	12/13/10 9:45 AM	1292258744	12/13/10 9:45 AM	685
1292261801	12/13/10 10:36 AM	801532234	685	7050	1292261821	12/13/10 10:37 AM	1292261825	12/13/10 10:37 AM	685
1292273845	12/13/10 1:57 PM	8014847556	685	7050	1292273866	12/13/10 1:57 PM	1292273868	12/13/10 1:57 PM	685
1292278905	12/13/10 3:21 PM	8015735083	685	685	1292278913	12/13/10 3:21 PM	1292279462	12/13/10 3:31 PM	685
1292279457	12/13/10 3:30 PM	8018444736	685	685	1292279465	12/13/10 3:31 PM	1292283251	12/13/10 4:34 PM	685
1292281197	12/13/10 3:59 PM	8014847556	685	7050	1292281217	12/13/10 4:00 PM	1292281220	12/13/10 4:00 PM	685
1292354874	12/14/10 12:27 PM	3037343413	685	7050	1292354895	12/14/10 12:28 PM	1292354940	12/14/10 12:29 PM	685
1292359548	12/14/10 1:45 PM	8014847556	685	7050	1292359568	12/14/10 1:46 PM	1292359571	12/14/10 1:46 PM	685
1292365730	12/14/10 3:28 PM	623	685	685	1292365735	12/14/10 3:28 PM	1292365806	12/14/10 3:30 PM	685
1292424797	12/15/10 7:53 AM	623	685	685	1292424803	12/15/10 7:53 AM	1292424886	12/15/10 7:54 AM	685
1292427154	12/15/10 8:32 AM	631	685	685	1292427161	12/15/10 8:32 AM	1292427190	12/15/10 8:33 AM	685
1292433207	12/15/10 10:13 AM	8012808090	685	685	1292433211	12/15/10 10:13 AM	1292433240	12/15/10 10:14 AM	685
1292447701	12/15/10 2:15 PM	600	685	685	0	12/31/89 5:00 PM	1292447705	12/15/10 2:15 PM	685
1292447705	12/15/10 2:15 PM	8012970780	685	7050	1292447724	12/15/10 2:15 PM	1292447777	12/15/10 2:16 PM	685
1292634451	12/17/10 6:07 PM	8016526308	685	685	0	12/31/89 5:00 PM	1292634452	12/17/10 6:07 PM	685
1293122425	12/23/10 9:40 AM	2055	685	685	1293122433	12/23/10 9:40 AM	1293122445	12/23/10 9:40 AM	685
1293130304	12/23/10 11:51 AM	8017968770	685	685	1293130308	12/23/10 11:51 AM	1293130334	12/23/10 11:52 AM	685
1293145897	12/23/10 4:11 PM	7051	685	685	0	12/31/89 5:00 PM	1293145898	12/23/10 4:11 PM	685
1293145898	12/23/10 4:11 PM	8015987217	685	685	1293145906	12/23/10 4:11 PM	1293146396	12/23/10 4:15 PM	7050
1293146562	12/23/10 4:22 PM	7051	685	685	0	12/31/89 5:00 PM	1293146563	12/23/10 4:22 PM	685
1293146563	12/23/10 4:22 PM	8015987217	685	685	1293146566	12/23/10 4:22 PM	1293146586	12/23/10 4:23 PM	7050
1293464757	12/27/10 8:45 AM	8012970780	685	7050	1293464777	12/27/10 8:46 AM	1293464817	12/27/10 8:46 AM	685
1293643648	12/29/10 10:27 AM	8015960700	685	685	1293643655	12/29/10 10:27 AM	1293643735	12/29/10 10:28 AM	685
1293658244	12/29/10 2:30 PM	8018447376	685	7050	1293658265	12/29/10 2:31 PM	1293658310	12/29/10 2:31 PM	685
1294074885	1/3/11 10:14 AM	651	685	7050	1294074906	1/3/11 10:15 AM	1294074935	1/3/11 10:15 AM	685
1294165557	1/4/11 11:25 AM	8015668100	685	7050	1294165578	1/4/11 11:26 AM	1294165622	1/4/11 11:27 AM	685
1294184474	1/4/11 4:41 PM	8015219000	685	7050	1294184495	1/4/11 4:41 PM	1294184533	1/4/11 4:43 PM	685
1294248124	1/5/11 10:22 AM	8015219000	685	7050	1294248144	1/5/11 10:22 AM	1294248213	1/5/11 10:23 AM	685
1294251730	1/5/11 11:22 AM	8015219000	685	7050	1294251750	1/5/11 11:22 AM	1294251804	1/5/11 11:23 AM	685
1294257398	1/5/11 12:56 PM	8015219000	685	7050	1294257418	1/5/11 12:56 PM	1294257443	1/5/11 12:57 PM	685
1294259534	1/5/11 1:32 PM	8015219000	685	685	1294259539	1/5/11 1:32 PM	1294263461	1/5/11 2:37 PM	685
1294327456	1/6/11 8:24 AM	8015687145	685	7050	1294327487	1/6/11 8:24 AM	1294327516	1/6/11 8:25 AM	685
1294362457	1/6/11 6:07 PM	8013722866	685	685	1294362463	1/6/11 6:07 PM	1294364463	1/6/11 6:41 PM	685
1294429822	1/7/11 12:50 PM	662	685	685	1294429825	1/7/11 12:50 PM	1294429849	1/7/11 12:50 PM	685
1294438335	1/7/11 3:12 PM	7051	685	685	0	12/31/89 5:00 PM	1294438335	1/7/11 3:12 PM	685
1294438335	1/7/11 3:12 PM	8018447527	685	685	1294438339	1/7/11 3:12 PM	1294438384	1/7/11 3:13 PM	7050
1294438578	1/7/11 3:16 PM	8015089957	685	685	1294438585	1/7/11 3:16 PM	1294439385	1/7/11 3:29 PM	685
1294689858	1/10/11 1:04 PM	418	685	685	1294689870	1/10/11 1:04 PM	1294690258	1/10/11 1:10 PM	685
1294698202	1/10/11 3:23 PM	662	685	685	1294698211	1/10/11 3:23 PM	1294698497	1/10/11 3:28 PM	685
1294759673	1/11/11 8:27 AM	8015687145	685	7050	1294759694	1/11/11 8:28 AM	1294759756	1/11/11 8:29 AM	685
1294764548	1/11/11 9:49 AM	600	685	7050	1294764571	1/11/11 9:49 AM	1294764574	1/11/11 9:49 AM	685
1294764574	1/11/11 9:45 AM	8012012034	685	7050	1294764574	1/11/11 9:49 AM	1294764585	1/11/11 9:49 AM	600
1294764629	1/11/11 9:50 AM	600	685	685	1294764633	1/11/11 9:50 AM	1294764633	1/11/11 9:50 AM	685
1294764633	1/11/11 9:50 AM	8012012034	685	685	1294764633	1/11/11 9:50 AM	1294764756	1/11/11 9:52 AM	600
1294764858	1/11/11 9:54 AM	651	685	685	1294764866	1/11/11 9:54 AM	1294764891	1/11/11 9:54 AM	685
1294779903	1/11/11 2:05 PM	651	685	7050	1294779924	1/11/11 2:05 PM	1294779959	1/11/11 2:05 PM	685
1294793625	1/11/11 5:53 PM	651	685	7050	1294793647	1/11/11 5:54 PM	1294793766	1/11/11 5:56 PM	685
1294794866	1/11/11 6:14 PM	651	685	685	0	12/31/89 5:00 PM	1294794880	1/11/11 6:14 PM	685
1294850715	1/12/11 9:45 AM	8019713206	685	685	1294850721	1/12/11 9:45 AM	1294850864	1/12/11 9:47 AM	685
1294870875	1/12/11 3:12 PM	8015321234	685	685	1294870381	1/12/11 3:13 PM	1294874122	1/12/11 4:15 PM	685
1294939746	1/13/11 10:29 AM	631	685	685	1294939754	1/13/11 10:29 AM	1294940130	1/13/11 10:35 AM	685
1294947423	1/13/11 12:37 PM	8015219000	685	7050	1294947444	1/13/11 12:37 PM	1294947479	1/13/11 12:37 PM	685
1294948225	1/13/11 12:50 PM	8013631807	685	685	0	12/31/89 5:00 PM	1294948244	1/13/11 12:50 PM	685
1294950491	1/13/11 1:28 PM	8013631807	685	7050	1294950512	1/13/11 1:28 PM	1294950546	1/13/11 1:29 PM	685
1294951574	1/13/11 1:46 PM	621	685	685	0	12/31/89 5:00 PM	1294951584	1/13/11 1:46 PM	685
1294951584	1/13/11 1:46 PM	8014836773	685	7050	1294951596	1/13/11 1:46 PM	1294951642	1/13/11 1:47 PM	685
1294960262	1/13/11 4:11 PM	651	685	7050	1294960283	1/13/11 4:11 PM	1294960284	1/13/11 4:11 PM	685
1294964678	1/13/11 5:24 PM	651	685	685	1294964684	1/13/11 5:24 PM	1294965149	1/13/11 5:32 PM	685
1295024747	1/14/11 10:05 AM	8016159773	685	685	1295024757	1/14/11 10:05 AM	1295024793	1/14/11 10:06 AM	685
1295026536	1/14/11 10:35 AM	8015341896	685	7050	1295026557	1/14/11 10:35 AM	1295026566	1/14/11 10:37 AM	685
1295029011	1/14/11 11:16 AM	8013631807	685	7050	1295029031	1/14/11 11:17 AM	1295029052	1/14/11 11:17 AM	685
1295038203	1/14/11 1:50 PM	8015219000	685	7050	1295038224	1/14/11 1:50 PM	1295038279	1/14/11 1:51 PM	685
1295044301	1/14/11 3:31 PM	8013217162	685	685	1295044310	1/14/11 3:31 PM	1295044719	1/14/11 3:38 PM	685
1295046639	1/14/11 4:10 PM	8015219000	685	685	1295046647	1/14/11 4:10 PM	1295050169	1/14/11 5:09 PM	685
1295278525	1/17/11 8:35 AM	8015687145	685	7050	1295278546	1/17/11 8:35 AM	1295278575	1/17/11 8:36 AM	685
1295384635	1/18/11 2:07 PM	8012012034	685	7050	1295384855	1/18/11 2:07 PM	1295384862	1/18/11 2:07 PM	685
1295384857	1/18/11 2:07 PM	8015687193	685	7050	1295384878	1/18/11 2:07 PM	1295384975	1/18/11 2:09 PM	685
1295391179	1/18/11 3:52 PM	8014836773	685	7050	1295391200	1/18/11 3:53 PM	1295391252	1/18/11 3:54 PM	685
1295397384	1/18/11 5:36 PM	621	685	685	1295397390	1/18/11 5:36 PM	1295397480	1/18/11 5:38 PM	685
1295397893	1/18/11 5:44 PM	651	685	7050	1295397915	1/18/11 5:45 PM	1295398049	1/18/11 5:47 PM	685
1295460773	1/19/11 11:12 AM	640	685	7050	1295460794	1/19/11 11:13 AM	1295460823	1/19/11 11:13 AM	685
1295550994	1/20/11 12:16 PM	623	685	685	1295551004	1/20/11 12:16 PM	1295551147	1/20/11 12:19 PM	685
1295555543	1/20/11 1:32 PM	623	685	685	1295555555	1/20/11 1:32 PM	1295555568	1/20/11 1:32 PM	685
1295555574	1/20/11 1:32 PM	600	685	685	0	12/31/89 5:00 PM	1295555578	1/20/11 1:32 PM</	

1296078756	1/26/11 2:52 PM	7051	685	685	0	12/31/69 5:00 PM	1296078757	1/26/11 2:52 PM	685
1296078757	1/26/11 2:52 PM	8016011656	685	7050	1296078777	1/26/11 2:52 PM	1296078806	1/26/11 2:53 PM	685
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1296147680	1/27/11 10:01 AM	410	685	7050	1296147703	1/27/11 10:01 AM	1296147730	1/27/11 10:02 AM	685
1296169352	1/27/11 4:02 PM	8015219000	685	685	1296169355	1/27/11 4:02 PM	1296170219	1/27/11 4:16 PM	685
1296172329	1/27/11 4:52 PM	8018447561	685	7050	1296172349	1/27/11 4:52 PM	1296172425	1/27/11 4:53 PM	685
1296250126	1/28/11 2:28 PM	410	685	685	1296250136	1/28/11 2:28 PM	1296250420	1/28/11 2:33 PM	685
1296253459	1/28/11 3:24 PM	651	685	7050	1296253480	1/28/11 3:24 PM	1296253488	1/28/11 3:24 PM	685
1296504798	1/31/11 1:13 PM	4805539079	685	7050	1296504819	1/31/11 1:13 PM	1296504828	1/31/11 1:13 PM	685

dateTimeOrigination	Time Stamp	callingPartyNumber	originalCalledPartyNumber	finalCalledPartyNumber	dateTimeConnect	Connect Time Stamp	dateTimeDisconnect	Disconnect Time Stamp	lastRedirectOn
1291390707	12/3/10 8:38 AM	7051	631	631	0	12/3/10 8:38 AM	1291390708	12/3/10 8:38 AM	631
1291390708	12/3/10 8:38 AM	8016922728	631	7050	1291390728	12/3/10 8:38 AM	1291390736	12/3/10 8:38 AM	631
1291648517	12/6/10 8:15 AM	7051	631	631	0	12/3/10 8:38 AM	1291648517	12/6/10 8:15 AM	631
1291648517	12/6/10 8:15 AM	8015654300	631	631	1291648529	12/6/10 8:15 AM	1291648642	12/6/10 8:17 AM	7050
1291655829	12/6/10 10:17 AM	7051	631	631	0	12/3/10 8:38 AM	1291655824	12/6/10 10:17 AM	631
1291655824	12/6/10 10:17 AM	8016922728	631	631	1291655834	12/6/10 10:17 AM	1291655807	12/6/10 10:18 AM	7050
1291656784	12/6/10 10:33 AM	600	631	631	0	12/3/10 8:38 AM	1291656791	12/6/10 10:33 AM	631
1291656791	12/6/10 10:33 AM	8012892621	631	631	1291656796	12/6/10 10:33 AM	1291657050	12/6/10 10:37 AM	600
1291661747	12/6/10 11:55 AM	685	631	631	1291661753	12/6/10 11:55 AM	1291661909	12/6/10 11:58 AM	631
1291666016	12/6/10 1:06 PM	8018435684	631	631	1291666020	12/6/10 1:07 PM	1291666333	12/6/10 1:12 PM	631
1291681764	12/6/10 5:29 PM	8017072416	631	7050	1291681785	12/6/10 5:29 PM	1291681792	12/6/10 5:29 PM	631
1291747614	12/7/10 11:46 AM	651	631	631	1291747617	12/7/10 11:46 AM	1291747886	12/7/10 11:51 AM	631
1291844433	12/8/10 2:40 PM	600	631	631	0	12/3/10 8:38 AM	1291844437	12/8/10 2:40 PM	631
1291844437	12/8/10 2:40 PM	3032912222	631	7050	1291844455	12/8/10 2:40 PM	1291844520	12/8/10 2:42 PM	631
1291911775	12/9/10 9:22 AM	7051	631	631	0	12/3/10 8:38 AM	1291911776	12/9/10 9:22 AM	631
1291911776	12/9/10 9:22 AM	8014952224	631	631	1291911781	12/9/10 9:23 AM	1291912144	12/9/10 9:29 AM	7050
1291912830	12/9/10 9:40 AM	620	631	631	1291912835	12/9/10 9:40 AM	1291912870	12/9/10 9:41 AM	631
1291917401	12/9/10 10:56 AM	8014683735	631	7050	1291917422	12/9/10 10:57 AM	1291917495	12/9/10 10:58 AM	631
1292252889	12/13/10 8:08 AM	3853516456	631	7050	1292252909	12/13/10 8:08 AM	1292252973	12/13/10 8:09 AM	631
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1292427131	12/15/10 8:32 AM	685	631	7050	1292427152	12/15/10 8:32 AM	1292427154	12/15/10 8:32 AM	631
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1292431660	12/15/10 9:47 AM	7051	631	631	0	12/3/10 8:38 AM	1292431661	12/15/10 9:47 AM	631
1292431661	12/15/10 9:47 AM	8014836770	631	7050	1292431681	12/15/10 9:48 AM	1292431725	12/15/10 9:48 AM	631
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1292527767	12/16/10 12:29 PM	662	631	7050	1292527788	12/16/10 12:29 PM	1292527856	12/16/10 12:30 PM	631
1292857315	12/20/10 8:01 AM	687	631	631	1292857321	12/20/10 8:02 AM	1292857390	12/20/10 8:03 AM	631
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1293031619	12/22/10 8:26 AM	694	631	631	1293031629	12/22/10 8:27 AM	1293031708	12/22/10 8:28 AM	631
1293033001	12/22/10 8:50 AM	600	631	631	0	12/3/10 8:38 AM	1293033005	12/22/10 8:50 AM	631
1293033005	12/22/10 8:50 AM	8019435684	631	631	1293033012	12/22/10 8:50 AM	1293033094	12/22/10 8:51 AM	600
1293033545	12/22/10 8:59 AM	688	631	631	1293033554	12/22/10 8:59 AM	1293033592	12/22/10 8:59 AM	631
1293036669	12/22/10 9:51 AM	7051	631	631	0	12/3/10 8:38 AM	1293036669	12/22/10 9:51 AM	631
1293036669	12/22/10 9:51 AM	8019714344	631	7050	1293036690	12/22/10 9:51 AM	1293036751	12/22/10 9:52 AM	631
1293051019	12/22/10 1:50 PM	7051	631	631	0	12/3/10 8:38 AM	1293051019	12/22/10 1:50 PM	631
1293051019	12/22/10 1:50 PM	3032912222	631	7050	1293051040	12/22/10 1:50 PM	1293051109	12/22/10 1:51 PM	631
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1293558049	12/28/10 10:41 AM	7051	631	631	0	12/3/10 8:38 AM	1293558090	12/28/10 10:41 AM	631
1293558090	12/28/10 10:41 AM	8017850139	631	631	1293558097	12/28/10 10:41 AM	1293558148	12/28/10 10:42 AM	7050
1293818391	12/31/10 10:59 AM	4357642255	631	7050	1293818411	12/31/10 11:00 AM	1293818491	12/31/10 11:01 AM	631
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1294071567	1/3/11 9:19 AM	685	631	631	1294071572	1/3/11 9:19 AM	1294071652	1/3/11 9:20 AM	631
1294097750	1/3/11 4:35 PM	621	631	631	1294097757	1/3/11 4:35 PM	1294097781	1/3/11 4:36 PM	631
1294155533	1/4/11 8:39 AM	8014682715	631	631	1294155565	1/4/11 8:39 AM	1294155902	1/4/11 8:45 AM	631
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1294259197	1/5/11 1:26 PM	685	631	7050	1294259218	1/5/11 1:26 PM	1294259248	1/5/11 1:27 PM	631
1294349373	1/6/11 2:29 PM	7051	631	631	0	12/3/10 8:38 AM	1294349373	1/6/11 2:29 PM	631
1294349375	1/6/11 2:29 PM	8014896770	631	7050	1294349396	1/6/11 2:29 PM	1294349430	1/6/11 2:30 PM	631
1294354915	1/6/11 4:01 PM	651	631	631	0	12/3/10 8:38 AM	1294354915	1/6/11 4:01 PM	631
1294421003	1/7/11 10:23 AM	7051	631	631	0	12/3/10 8:38 AM	1294421004	1/7/11 10:23 AM	631
1294421004	1/7/11 10:23 AM	5036350393	631	7050	1294421024	1/7/11 10:23 AM	1294421080	1/7/11 10:24 AM	631
1294432561	1/7/11 1:36 PM	7051	631	631	0	12/3/10 8:38 AM	1294432562	1/7/11 1:36 PM	631
1294432562	1/7/11 1:36 PM	8017850139	631	7050	1294432582	1/7/11 1:36 PM	1294432588	1/7/11 1:36 PM	631
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1294949625	1/13/11 1:13 PM	685	631	631	0	12/3/10 8:38 AM	1294949626	1/13/11 1:13 PM	631
1294949713	1/13/11 1:15 PM	685	631	631	1294949715	1/13/11 1:15 PM	1294949732	1/13/11 1:15 PM	631
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1295385247	1/18/11 2:14 PM	7051	631	631	0	12/3/10 8:38 AM	1295385247	1/18/11 2:14 PM	631
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1295460111	1/19/11 11:01 AM	7051	631	631	0	12/3/10 8:38 AM	1295460111	1/19/11 11:01 AM	631
1295460111	1/19/11 11:01 AM	8013588928	631	7050	1295460132	1/19/11 11:02 AM	1295460174	1/19/11 11:02 AM	631
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1295484148	1/19/11 5:42 PM	8015612513	631	631	12				

1295998224	1/25/11 4:30 PM	8017852111	631	7050	1295998245	1/25/11 4:30 PM	1295998296	1/25/11 4:31 PM	631
1296062158	1/26/11 10:15 AM	7051	631	631	0	12/31/69 5:00 PM	1296062159	1/26/11 10:15 AM	631
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1296067438	1/26/11 11:43 AM	651	631	631	0	12/31/69 5:00 PM	1296067440	1/26/11 11:44 AM	631
1296079765	1/26/11 3:09 PM	8014952224	631	7050	0	12/31/69 5:00 PM	1296079784	1/26/11 3:09 PM	631
1296141645	1/27/11 8:20 AM	403	631	7050	1296141668	1/27/11 8:21 AM	1296141678	1/27/11 8:21 AM	631
1296144919	1/27/11 9:15 AM	410	631	631	0	12/31/69 5:00 PM	1296144937	1/27/11 9:15 AM	631
1296151598	1/27/11 11:06 AM	640	631	7050	1296151619	1/27/11 11:06 AM	1296151622	1/27/11 11:07 AM	631
1296161505	1/27/11 1:51 PM	685	631	631	1296161510	1/27/11 1:51 PM	1296161528	1/27/11 1:52 PM	631
1296173543	1/27/11 5:12 PM	7051	631	631	0	12/31/69 5:00 PM	1296173543	1/27/11 5:12 PM	631
1296179543	1/27/11 5:12 PM	8012698811	631	7050	1296173564	1/27/11 5:12 PM	1296173617	1/27/11 5:13 PM	631
1296177253	1/27/11 6:14 PM	685	631	631	1296177256	1/27/11 6:14 PM	1296177651	1/27/11 6:20 PM	631
1296249231	1/28/11 2:13 PM	8014952224	631	7050	1296249252	1/28/11 2:14 PM	1296249260	1/28/11 2:14 PM	631
1296492400	1/31/11 9:46 AM	7051	631	631	0	12/31/69 5:00 PM	1296492401	1/31/11 9:46 AM	631
1296492401	1/31/11 9:46 AM	8016330730	631	7050	1296492422	1/31/11 9:47 AM	1296492457	1/31/11 9:47 AM	631
1296497735	1/31/11 11:15 AM	7051	631	631	0	12/31/69 5:00 PM	1296497735	1/31/11 11:15 AM	631
1296497735	1/31/11 11:15 AM	8017560909	631	7050	1296497756	1/31/11 11:15 AM	1296497811	1/31/11 11:16 AM	631

## **ADDENDUM 9**

FILED  
DISTRICT COURT  
10 DEC -1 PM 4:59  
THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY  
BY [Signature]  
DEPUTY CLERK

2. Defendant has failed to respond to MWDSLS's Complaint or otherwise appear in this action.

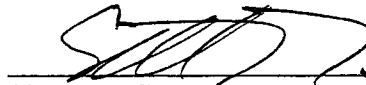
3. Defendant is not an infant nor incompetent person, nor in the armed forces within the meaning of the Service Member's Civil Relief Act, 50 U.S.C. App. § 520(I).

4. The relief requested by MWDSLS in its Complaint can be readily ascertained and awarded in a Default Judgment of this Court, in the form submitted herewith.

WHEREFORE, having satisfied the requirements of Rule 55(b)(2), Plaintiff requests that Default Judgment be entered by the Court, in the form submitted herewith.

DATED this 15<sup>th</sup> of December, 2010

**SNOW, CHRISTENSEN & MARTINEAU**



Shawn E. Draney

Scott H. Martin

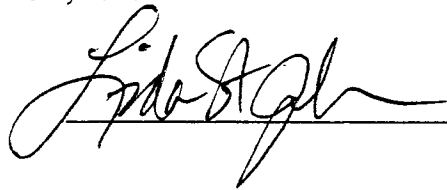
Attorneys for Plaintiff MWDSLS

## CERTIFICATE OF SERVICE

I state that I served the attached **APPLICATION FOR ENTRY OF DEFAULT JUDGMENT** upon the parties listed below by placing a true and correct copy thereof in an envelope and causing the same to be mailed, first class, postage prepaid to:

Mr. Zdenek Sorf  
9625 South Mount Jordan Road  
Sandy, Utah 84092

DATED this 19 day of December, 2010.



---

16002-62 1592929



21

**FILED DISTRICT COURT**  
Third Judicial District

MAR 17 2011

By \_\_\_\_\_  
SALT LAKE COUNTY  
Deputy Clerk

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

METROPOLITAN WATER DISTRICT	)	
OF SALT LAKE & SANDY,	)	
	)	<b>[PROPOSED] ORDER DENYING</b>
Plaintiff,	)	<b>DEFENDANT'S MOTION TO SET</b>
	)	<b>ASIDE DEFAULT JUDGMENT</b>
v.	)	
	)	Civil No. 100921025
ZDENEK SORF,	)	
	)	Judge Joseph C. Fratto, Jr.
Defendant.	)	
	)	

---

Defendant's Motion to Set Aside Default Judgment ("Motion") came before the Court on  
March 8, 2011 at 2:30 p.m.

Defendant Zdenek Sorf appeared through counsel, Paul M. Belnap.

Plaintiff Metropolitan Water District of Salt Lake & Sandy appeared through counsel,  
Shawn E. Draney and Scott H. Martin.

Based on the written submissions of the parties and oral argument presented, the Court orders as follows:

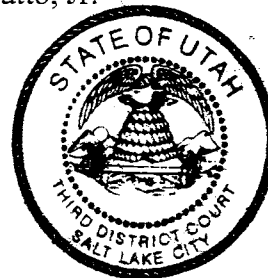
1. Based on the Court's finding that Defendant was properly served with the Complaint and Summons, that Defendant has not made an adequate showing of excusable neglect, mistake, or inadvertence in his failure to respond to the Complaint, and that those defenses proffered by Defendant to Plaintiff's Complaint are not meritorious as a matter of law under the circumstances given Plaintiff's defined easement, its prior federal ownership, and Plaintiff's status as a political subdivision of the state, the Court hereby denies Defendant's Motion.

2. The Default Judgment entered December 13, 2010 by this Court remains in full force and effect.

SO ORDERED this 17 day of March, 2011.

BY THE COURT.

Honorable Joseph C. Pratto, Jr.  
District Court Judge

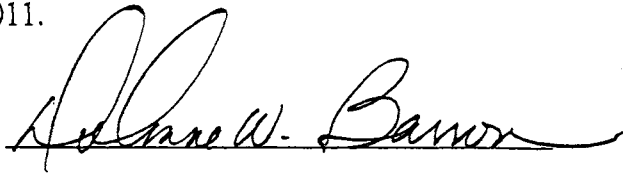


**CERTIFICATE OF SERVICE**

I state that I served the attached [PROPOSED] ORDER DENYING DEFENDANT'S  
MOTION TO SET ASIDE DEFAULT JUDGMENT upon the party listed below by placing a  
true and correct copy thereof in an envelope and causing the same to be mailed via first class  
U.S. Mail to:

Paul Belnap  
Bradley Wm. Bowen  
Casey W. Jones  
Strong & Hanni  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84111  
Attorneys for Zdenek Sorf

DATED this 16<sup>th</sup> day of March, 2011.

A handwritten signature in black ink, appearing to read "Bradley W. Bowen", written over a horizontal line.

16002-62 1687687v1



7

**PROOF OF SERVICE FILED**  
THIRD DISTRICT COURT

10 DEC 28 AM 10:22

SALT LAKE COUNTY

BY MP  
DEPUTY CLERK

CASE NO: 100921025

THIRD JUDICIAL DISTRICT COURT )  
SALT LAKE COUNTY, STATE OF UTAH )

I, Mel B. Ashton hereby certify under the penalties of perjury and in accordance with the provisions set forth by the State of Utah, Section 78B-5-705 the following:

I am a citizen of the United States over the age of 18 years at the time of service herein, and am not a party to or have an interest in the within action.

I received the attached Default Judgment on December 17, 2010 and served the same on December 23, 2010 at 1:09 p.m. on Zdenek Zorf by serving his wife, Mrs. Zorf at 9625 South Mount Jordan Road, Sandy, Utah 84092. She answered the door and I said Mrs. Zorf and she said "yes." I showed her the Default Judgment and told her I was serving her. She said "no" and slammed the door. The service was in the door. She is a white female, about 45 years old, brown shoulder length hair, 5'5" tall and 120 pounds.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

I further certify that at the time of service I endorsed the date and time of service and added my name thereto.

Dated this 23<sup>rd</sup> day of December, 2010

Mel B. Ashton  
Mel B. Ashton, DPS G100001  
A. A. & Associates, Inc.  
P.O. Box 964  
Sandy, Utah 84091

Date: 12-23-10  
Time: 1:09 PM  
Place: 9625 S. Mt Jordan Road  
Served by: Mel Ashlan  
Served on: Zdenek Sorf  
Mrs Sorf

**FILED DISTRICT COURT**  
Third Judicial District

DEC 16 2010

SALT LAKE COUNTY

By \_\_\_\_\_  
Deputy Clerk

SHAWN E. DRANEY (4026)  
SCOTT H. MARTIN (7750)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
Facsimile: (801) 363-0400  
*Attorneys for Plaintiff*

**Serve Defendant at:**  
Mr. Zdenek Sorf  
9625 South Mount Jordan Road  
Sandy, Utah 84092

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY,

Plaintiff,

v.

ZDENEK SORF,

Defendant.

**DEFAULT JUDGMENT**

Civil No. 100921025

Judge Fratto

Due to Defendant Zdenek Sorf's ("Defendant") failure to appear and plead or otherwise defend in this action, default judgment is hereby entered as follows:

It is ORDERED, ADJUDGED, AND DECREED that Plaintiff Metropolitan Water District of Salt Lake & Sandy ("MWDSLS") is granted judgment against Defendant, as follows:

1. Not later than twenty (20) calendar days after the entry of this Judgment and service of the same upon Defendant, Defendant shall remove all improvements that

encroach on that portion of MWDSLS's Tract 417 of the Salt Lake Aqueduct ("SLA") corridor ("SLA Corridor") which crosses Defendant's Property (9625 South Mt. Jordan Road (at 2550 East) Sandy, Utah) as follows:

a. Defendant shall remove all encroachments not authorized by MWDSLS, including, but not limited to, rock retaining walls, added fill material, gazebo, hot tub, two (2) outbuildings, trees, and water features.

b. Defendant shall return adequate soils and fill (2' to 3' in depth) on the south portion of Defendant's Property traversed by the SLA.

c. MWDSLS shall be given not less than twenty-four (24) hours notice before the work begins.

d. MWDSLS shall have the right to observe and inspect all work performed by or on behalf of Defendant, and direct the work as necessary to reasonably mitigate risk to the SLA and related facilities.

e. The work will be completed consistent with applicable MWDSLS regulations.

f. Defendant will immediately remove all impediments to access to the SLA corridor by MWDSLS and its contractor(s). This will be accomplished by installing (at a minimum) access gates with openings not less than 12 feet in width on the north and south property lines. If Defendant desires to have a lock on the gate, he shall make arrangements acceptable to MWDSLS for locks in series and allow MWDSLS to place their own lock, such that MWDSLS has access to the SLA corridor at all times.


2. If Defendant fails to fully comply with Paragraph 1 immediately above, MWDSLS, or MWDSLS' contractor, may move and remove all described encroaching improvements, and Defendant is hereby enjoined from interfering with such work. MWDSLS may seek additional judgment or judgments for any costs incurred as a result of Defendant's failure to fully comply with paragraph 1 above.

3. For that portion of Defendant's home that is located within the SLA Corridor, Defendant shall enter a standard cooperation agreement with MWDSLS allowing for the home's continued occupation of the SLA Corridor.

4. Defendant is hereby enjoined from any future trespass upon MWDSLS property interests in the SLA across or adjoining Defendant's Property, and all violations of MWDSLS regulations regarding the SLA.

ENTERED this 13<sup>th</sup> day of December, 2010.

BY THE COURT:

  
\_\_\_\_\_  
District Court Judge Fratto

## **ADDENDUM 12**

1028030

## WARRANTY DEED OF EASEMENT

ELIZABETH COLEMAN, also known as E. COLEMAN, Grantor,  
of Salt Lake County, State of Utah, hereby conveys and warrants  
to Metropolitan Water District of Salt Lake City, a public cor-  
poration of Utah, Grantee, for the sum of Ten Dollars (\$10.00)  
and other good and valuable consideration, a perpetual easement  
to construct, reconstruct, operate and maintain a pipeline or  
pipelines on, over and across the following described property  
in Salt Lake County, State of Utah:

A strip of land in the South Half of the Southeast Quarter  
of the Northeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section Ten (10),  
Township Three (3) South, Range One (1) East, Salt Lake  
Base and Meridian, One Hundred Twenty-five (125.0) Feet  
wide and included between two lines extended to the property  
lines and everywhere distant Seventy-five (75.0) Feet on  
the West or left side and Fifty (50.0) Feet on the East or  
right side of the following described center line of the  
Salt Lake Aqueduct from Station 1679+53.0 to Station 1686+  
measured at right angles and/or radially thereon. Said  
line is more particularly described as follows:

Beginning at Station 1679+53.0 of the Salt Lake Aqueduct, a  
point on the South line of the Grantor's property in the  
South Half of the Southeast Quarter of the Northeast Quarter  
(S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section 10, from which point the North-  
east corner of said Section 10 lies North Twenty-six  
Hundred Twenty-seven and Fourteen/Hundredths (2627.14) Feet  
and East Seven Hundred Seventy-five and Eighty-three/Hundredths  
(775.83) Feet, more or less; thence North 7° 11' East Six  
Hundred Thirty-two (632.0) Feet to Station 1686+15.0, a  
point on the North line of the Grantor's property, from which  
point the Northeast corner of said Section 10 lies North  
Two Thousand and Eleven/Hundredths (2000.11) Feet and East  
Six Hundred Ninety-six and Eight-tenths (696.8) Feet, more  
or less; containing 1.81 acres, more or less;

Also, a strip of land in the North Half of the Southeast  
Quarter of the Northeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section Ten  
(10), Township Three (3) South, Range One (1) East, Salt  
Lake Base and Meridian, One Hundred Twenty-five (125.0)  
Feet wide and included between two lines extended to the  
property lines and everywhere distant Seventy-five (75.0)  
Feet on the West or left side and Fifty (50.0) Feet on the  
East or right side of the following described center line  
of the Salt Lake Aqueduct from Station 1686+15.0 to Station  
1692+82.0, measured at right angles and/or radially thereon.  
Said center line is more particularly described as follows:

Beginning at Station 1686+15.0, a point on the South line  
of the Grantor's property in the North Half of the South-  
east Quarter of the Northeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said  
Section 10, from which point the Northeast corner of said  
Section 10 lies North Two Thousand and Eleven/Hundredths  
(2000.11) Feet and East Six Hundred Ninety-six and Eight-  
tenths (696.8) Feet, more or less; thence North 7° 11' East  
Three Hundred Nine and Eight-tenths (309.8) Feet; thence on  
a regular curve to the right with a radius of Sixteen Hundred  
(1600.0) Feet and a length of One Hundred Twenty and One-

tenth (120.1) Feet, as measured on the arc of the curve;  
 thence North  $11^{\circ}29'$  East Two Hundred Thirty-seven and  
 One-tenth (237.1) Feet to Station 1692/82.0, a point on  
 the North line of the Grantor's property, from which point  
 the Northeast corner of said Section 10 lies North Thirteen  
 Hundred Forty-one and Eighty-six/One-hundredths (1341.86) Feet  
 and East Five Hundred Ninety-one and Thirty-eight/One-  
 hundredths (591.38) Feet, more or less; containing 1.57 acres,  
 more or less.

WITNESS the hand  
 February, 1946.

*[Signature]*

STATE OF UTAH )  
 COUNTY OF SALT LAKE ) SS

On the 4th  
 appeared before me E.  
 going instrument, who  
 the same.

1946, personally  
 r of the fore-  
 at she executed

in  
 at Salt Lake City

My co

51-106146-2  
Filed 12-10-72  
Index 1  
Photo 2-26-48-2A-PP  
Abstract 4 Notes

*Kenney Bley*

1091  
When recorded return to:  
Snow, Christensen & Martineau  
Attn: Shawn E. Draney  
10 Exchange Place  
P.O. Box 45000  
Salt Lake City, Utah 84145

9862736  
10/02/2006 02:27 PM \$0.00  
Book - 9359 Pg - 6770-6929  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
METROPOLITAN WATER DIST OF SL  
3430 E DANISH RD  
SANDY UT 84093  
BY: ZJM, DEPUTY - WI 160 P.

(Quitclaim Deed No. 1 under Contract No. 04-WC-40-8950)

**QUITCLAIM DEED**  
**(Salt Lake Aqueduct, Salt Lake County Lands)**

THE UNITED STATES OF AMERICA (Grantor), acting by and through the Bureau of Reclamation, Department of the Interior, pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Provo River Project Transfer Act (Public Law 108-382, 118 Stat. 2212), hereby quitclaims and conveys to METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY (Grantee), a political subdivision of the State of Utah, 3430 East Danish Road, Cottonwood Heights, Utah 84093, for Ten Dollars (\$10.00) and other good and valuable consideration, all of Grantor's right, title and interest in and to lands and interests in lands located in Salt Lake County, Utah, commonly referred to as the Salt Lake Aqueduct, more particularly described in Exhibit A, attached and by this reference made a part hereof.

TOGETHER WITH all facilities, equipment, improvements, fixtures, features and appurtenances located in, under or upon such lands or interests in lands.

TOGETHER WITH the rights, privileges, duties, obligations, and responsibilities of the Grantor which exist, as of the date of this Quitclaim Deed, as a result of any valid right-of-use agreements entered by Grantor. The Grantee shall honor the terms of each such right-of-use agreement, as described in the Provo River Project Transfer Act and Contract No. 04-WC-40-8950, dated November 23, 2004.

ALL OF THE ABOVE described lands or interests in lands, facilities, equipment, improvements, fixtures, features, and appurtenances are hereinafter collectively referred to as the "Real Property". This Quitclaim Deed shall be interpreted as conveying all of Grantor's interest, present and future, in all lands, interests in lands, facilities, equipment, improvements, fixtures, features and appurtenances that in anywise are a part of or essential to the ownership, operation, or maintenance of the Aqueduct Division of the Provo River Project lying or located within Salt Lake County, Utah, whether acquired or constructed by or for Grantor, or acquired or constructed by or for Grantee, or constructed by or for others pursuant to right-of-use agreements, except as expressly excluded or reserved below.

**THIS CONVEYANCE DOES NOT INCLUDE OR MODIFY:**

1. Any interest in or to any National Forest system lands crossed by the Salt Lake Aqueduct. As to such lands, Grantor shall convey to Grantee, by separate instrument, an appropriately sized, permanent easement for the use, operation, maintenance, repair, improvement,

and replacement of the Salt Lake Aqueduct, as described in the Provo River Project Transfer Act and Contract No. 04-WC-40-8950.

2. Any interests in water rights or rights to use water.

3. Any oil, gas or other mineral rights or interests held in the name of the United States; *provided*, however, that any future exploration for oil, gas or other Federally owned minerals or minerals rights or interests underlying the Real Property shall be conducted in such a manner as will not compromise the structural integrity of, or interfere with the use, operation, maintenance, repair or replacement of, the Salt Lake Aqueduct, or related facilities, equipment, improvements, fixtures, features or appurtenances; *provided further* that no surface occupancy for exploration or exploitation of oil, gas, or other Federally owned minerals rights or interests shall be allowed on the Real Property.

**THIS CONVEYANCE IS SUBJECT TO:**

1. Oil, gas, and other mineral rights reserved of record by or in favor of third-parties as of the date of this Quitclaim Deed.

2. Valid permits, licenses, leases, rights-or-use, or rights-of-way of record or outstanding on, over, or across the Real Property in existence on the date of this Quitclaim Deed.

3. A perpetual easement reserved by Grantor on, over, or across the Real Property to provide for lawful continued non-motorized public access to and across the Real Property for recreational purposes; *provided* that such non-motorized public use shall not interfere with the use, operation, maintenance, repair, improvement, replacement or protection of the Salt Lake Aqueduct and related facilities, equipment, improvements, fixtures, features and appurtenances, and such non-motorized public use shall be subject to all existing and future state, federal, local and Grantee statutes, rules, regulations, ordinances, policies and procedures regarding safety and security.

4. Title to any equipment, improvements, fixtures, features and appurtenances which are part of the Provo River Project, Utah, Deer Creek Division, is hereby reserved to the Grantor.

5. Title to any equipment, improvements, fixtures, features and appurtenances which are part of the Central Utah Project is hereby reserved to the Grantor.

**NOTICE IS HEREBY GIVEN that:**

1. Acting pursuant to the requirements of 40 CFR 373, on April 23, May 3, and May 18, 2006, the Grantor performed a hazardous waste survey of the Real Property, and a copy of said survey was delivered to the Grantee in a letter dated September 26, 2006. The Real Property conveyed herein to the Grantee is being conveyed in the same condition as existed on the date of said survey and which is more particularly described in that survey. No remediation by the Grantor on behalf of the Grantee has been or will be made.

2. The Grantee has used, and has had operation and maintenance responsibility for the Real Property for over 50 years. Grantee and its successors and assigns accept the Real Property

"as is" and also accept liability for the Real Property from the date of this Quitclaim Deed forward.

3. The Grantee, its successors and assigns shall be responsible for the protection, identification, and preservation of cultural resources, if any, located on the Real Property as required by the existing and future laws of the State of Utah.

4. Nothing in this Quitclaim Deed shall be construed as including the quitclaim, abandonment, forfeiture, or relinquishment by the Grantor of its basic patent right reserved by the Act of August 30, 1890 (26 Stat. 391) as to the described lands for easements claimed, or to be claimed, for purposes other than the Salt Lake Aqueduct.

5. Nothing in this Quitclaim Deed shall be construed or interpreted as altering or amending the terms or conditions of any United States contract, or supplements or amendments thereto, except as specifically provided in Article 20 of Contract No. 04-WC-40-8950, dated November 23, 2004.

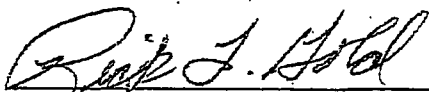
6. If any further specific conveyances should be necessary hereafter, because of the discovery of additional Real Property not listed on the Exhibits, to more specifically and legally describe the Real Property, or because the Grantor acquires any title to or interest in the Salt Lake Aqueduct by reason of an instrument in the Grantor's chain of title, or by operation of law, then Grantor shall make reasonable efforts to provide such conveyances, on the same terms and conditions set forth above.

7. Nothing in this Quitclaim Deed shall be construed or interpreted as creating any condition subsequent, reverter, or possibility of a reverter.

**TO HAVE AND TO HOLD** unto Grantee, and Grantee's successors and assigns, the Real Property, together with all the rights and appurtenances thereto in anywise belonging, forever.

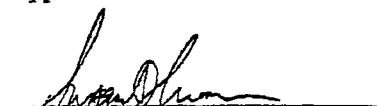
WITNESS the hand of the Grantor this 2<sup>nd</sup> day of October, 2006.

UNITED STATES OF AMERICA



Rick L. Gold  
Regional Director, Upper Colorado Region  
Bureau of Reclamation  
Acting for the Secretary of Interior  
of the United States

Approved:

  
Office of the Regional Solicitor

ACKNOWLEDGEMENT

STATE OF UTAH

:SS.

COUNTY OF SALT LAKE :

On this 2<sup>nd</sup> day of October, 2006, personally appeared before me, Rick L. Gold, known to me to be the Regional Director of the Bureau of Reclamation, Upper Colorado Region, United States Department of the Interior, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of THE UNITED STATES OF AMERICA, pursuant to authority delegated to him from the Secretary of the Interior.

(NOTARY SEAL)

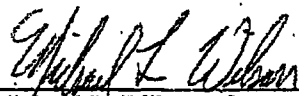
Pauline P. Brown  
Notary Public in and for the State of Utah  
Residing at: Orion



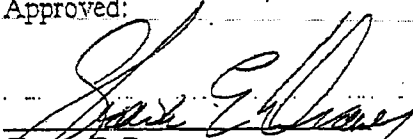
## ACCEPTANCE

The parties intend for the above Quitclaim Deed to satisfy a portion of the terms of Contract No. 04-WC-40-8950, dated November 23, 2004, and a portion of the requirements of Public Law 108-382. The Grantee accepts this Quitclaim Deed on the terms and conditions stated herein. The Grantee hereby further agrees and acknowledges that: (1) the Salt Lake Aqueduct shall no longer be regarded or treated either as a Provo River Project or a United States facility, except with regard to Provo River Project water as provided for in Section 17 of Contract No. 04-WC-40-8950, dated November 23, 2004; the Grantee shall not be entitled to receive any future Reclamation benefits with respect to the Real Property, except for benefits that would be available to other non-Reclamation facilities; and (3) to the fullest extent allowed by law, the Grantee agrees to indemnify and hold harmless the Grantor, its officers and employees from any claims, liabilities or other responsibilities which may arise subsequent to the date of this Quitclaim Deed which result from the Grantee's use, operation, or maintenance of the Real Property as described in this Quitclaim Deed.

METROPOLITAN WATER DISTRICT  
OF SALT LAKE & SANDY

  
Michael L. Wilson, General Manager.

Approved:

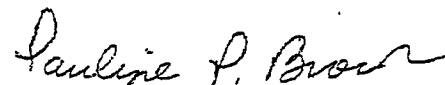
  
Shawn E. Draney,  
Counsel for Metropolitan Water District of Salt Lake & Sandy

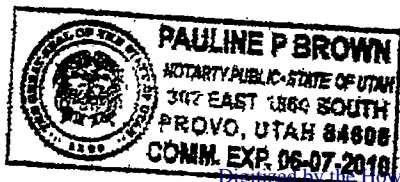
## ACKNOWLEDGEMENT

STATE OF UTAH :  
:SS.  
COUNTY OF SALT LAKE :

On this 2<sup>nd</sup> day of October, 2006, personally appeared before me, Michael L. Wilson, known to me to be the General Manager of the Metropolitan Water District of Salt Lake & Sandy, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of Metropolitan Water District of Salt Lake & Sandy, pursuant to authority delegated to him from the Board of Trustees of the Metropolitan Water District of Salt Lake & Sandy.

(NOTARY SEAL)

  
Notary Public in and for the State of Utah  
Residing at:



416;417

Recorded SEP 11 1962 at 12:40 P. M.  
 Request of Phon River Project  
 E. J. H. Hunter, County Assessor,  
 Recorder, Salt Lake County, Utah  
 # 2-80 by James H. Hunter Deputy  
 Page 55 Ref.

## WARRANTY DEED OF EASEMENT

P.O. Box 77, Provo, Utah

METROPOLITAN WATER DISTRICT OF SALT LAKE CITY, a metropolitan water district organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake City, County of Salt Lake, State of Utah, Grantor, hereby conveys and warrants to THE UNITED STATES OF AMERICA, acting pursuant to the provisions of the Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, Grantee, for the sum of Ten Hundred Twenty and 75/100 (\$220.75) Dollars

A perpetual easement to construct and reconstruct, operate and maintain an underground pipeline and appurtenant structures, which latter may be situated above ground surface, on, over or across the following described property situated in Salt Lake County, State of Utah:

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A strip of land in the South Half of the Southeast Quarter of the Northeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section Ten (10), Township Three (3) South, Range One (1) East, Salt Lake Base and Meridian, One Hundred Twenty-five (125) feet wide and included between two lines extended to the property lines and everywhere distant Seventy-five (75) feet West or to the left and Fifty (50) feet East or to the right of the following described center line of what is known as the Salt Lake Aqueduct from Station 1679+83 to Station 1686+15 measured at right angles and/or radially thereto. Said center line is more particularly described as follows:

Beginning at Station 1679+83 a point on the South line of the Grantor's property in said Section 10, from which point the Northeast corner of said Section 10 lies North Twenty-six Hundred Twenty-seven and one-tenth (2627.1) feet and East Seven Hundred Seventy-five and Eight-tenths (775.8) feet, more or less; and running thence North 7.22' East Six Hundred Thirty-two (632) feet, more or less, to Station 1686+15 of said Aqueduct center line, a point on the North line of the Grantor's property, from which point the Northeast corner of said Section 10 lies North Twenty Hundred and one-tenth (2000.1) feet and East Six Hundred Ninety-six and Eight-tenths (696.8) feet, more or less; containing 1.81 acres, more or less.

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Also, a strip of land in the North Half of the Southeast Quarter of the Northeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section Ten (10), Township Three (3) South, Range One (1) East, Salt Lake Base and Meridian, One Hundred Twenty-five (125) feet wide and included between two lines extended to the property lines and everywhere distant Seventy-five (75) feet West or to the left and Fifty (50) feet East or to the right of the following described center line of what is known as the Salt Lake Aqueduct from Station 1686+15 to Station 1692+82, measured at right angles and/or radially thereto. Said center line is more particularly described as follows:

60 P. m.  
Utah  
Deputy

Beginning at Station 1686+15 a point on the South line of the Grantor's property in said Section 10, from which point the Northeast corner of said Section 10 lies North Twenty Hundred and One-tenth (2000.1) feet and East Six Hundred Ninety-six and Eight-tenths (696.8) feet, more or less; and running thence North 7-11' East Three Hundred Nine and Eight-tenths (309.8) feet; thence on a regular curve to the right having a radius of Sixteen Hundred (1600) feet, and a distance of One Hundred Twenty and One-tenth (120.1) feet, as measured on the ar. of the curve; thence North 11-29' East Two Hundred Thirty-seven and One-tenth (237.1) feet to Station 1692+82 of said Aqueduct center line, a point on the North line of the Grantor's property, from which point the Northeast corner of said Section 10 lies North Thirteen Hundred Forty-one and Nine-tenths (1341.9) feet and East Five Hundred Ninety-one and Four-tenths (591.4) feet, more or less; containing 1.57 acres, more or less.

The total area of the above-described tracts is 3.38 acres, more or less.

IN WITNESS WHEREOF, said District has caused this deed to be signed by its Chairman of the Board of Directors and its corporate seal to be affixed thereto this 22nd day of August, 1952.

METROPOLITAN WATER DISTRICT OF SALT LAKE CITY

*Walter C. Jolly*  
ATTEST (SEAL)  
Asst. Secretary

By *George W. Snyder*  
Chairman of its Board of Directors

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss

On the 22nd day of August, 1952, personally appeared before me, George W. Snyder, who, being duly sworn by me, did say that he is the Chairman of the Board of Directors of the Metropolitan Water District of Salt Lake City, and that said instrument was signed in behalf of said District pursuant to authority of a resolution of its Board of Directors, and said George W. Snyder acknowledged to me that said district executed the same.

*Emma F. Back*  
Notary Public, Residing at Salt Lake City, County of Salt Lake, State of Utah.

My Commission Expires:  
Nov 8, 1952

## **ADDENDUM 13**

Paul M. Belnap, #0279  
Bradley Wm. Bowen, #5042  
Casey W. Jones, #12133  
STRONG & HANNI  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7080  
Facsimile: (801) 596-1508  
[pbelnap@strongandhanni.com](mailto:pbelnap@strongandhanni.com)  
[bbowen@strongandhanni.com](mailto:bbowen@strongandhanni.com)  
[cjones@strongandhanni.com](mailto:cjones@strongandhanni.com)

*Attorneys for Defendant Zdenek Sorf*

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**IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY**  
**STATE OF UTAH**

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METROPOLITAN WATER DISTRICT OF  
SALT LAKE & SANDY,

Plaintiff,

v.

ZDENEK SORF,

Defendant.

**DEFENDANT'S COUNTERCLAIM  
(PROPOSED)**

Civil No.: 100921025

Judge Joseph C. Fratto, Jr.

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Defendant and Counterclaimant, Zdenek Sorf, by and through counsel, alleges as follows:

**JURISDICTION AND VENUE**

1. Zdenek Sorf is an individual residing in Salt Lake County, State of Utah.

2. Metropolitan Water District of Salt Lake & Sandy ("District") is an independent political subdivision of the State of Utah with offices located in Salt Lake County.

3. This Court has jurisdiction pursuant to Utah Code Ann. §§ 78A-5-102 and 78B-3-205.

4. Venue is proper pursuant to Utah Code Ann. § 78B-3-301(1), as the real property that is the subject matter of this action is located in Salt Lake County.

### **FACTS AND GENERAL ALLEGATIONS**

5. The Salt Lake Aqueduct ("SLA") is part of the public water delivery infrastructure in Salt Lake City and County.

6. The SLA corridor consists of easement and fee lands purportedly held by the District.

7. Mr. Sorf owns the residence at 9625 S. Mount Jordan Road in Sandy, Utah.

8. Mr. Sorf has lived in his residence for nearly 24 years. The SLA easement covers the majority of Mr. Sorf's backyard and even extends into the southeast corner of his home.

9. Mr. Sorf has spent nearly \$150,000 improving, designing and developing his backyard landscaping.

10. A default judgment was entered against Mr. Sorf on December 13, 2010.

11. In light of the default judgment, the District is demanding Mr. Sorf permanently remove, at his expense, all structures that sit on or near the SLA easement in his backyard

including, but not limited to, rock retaining walls, added fill material, gazebo, hot tub, two (2) outbuildings, trees, and water features.

12. In light of the default judgment, the District is also demanding Mr. Sorf, at his expense, return adequate soils and fill (2' to 3' in depth) on the south portion of his property traversed by the SLA.

13. In light of the default judgment, the District required Mr. Sorf to install gates with openings not less than 12 feet in width on the north and south property lines. The purpose of the gates is to create an access point for the District, and its contractors, to access the SLA corridor pursuant to their discretion.

14. As a condition of using the property within the easement, the District, through the default judgment, is requiring Mr. Sorf to enter an agreement entitled "Cooperation Agreement" (hereinafter "Agreement") that restricts and regulates the use of Mr. Sorf's property and what can be done with the property.

15. Under the Agreement, the District is requiring that various structures on Mr. Sorf's property be permanently removed (i.e. added fill material, turf areas, rock retaining walls, fencing and access gates, flat work, concrete and rock pathways, garden boxes, an electrical utility line, a motorcycle barn, an equipment shed, a gazebo and hot tub, deck, water feature, and trees within the SLA corridor), and is precluding the construction of future improvements without first receiving written permission from the District.

16. The southeast corner of Mr. Sorf's home encroaches approximately 4.3 feet onto the SLA corridor. The District requires that for the encroaching portion of Mr. Sorf's home

to remain in place, Mr. Sorf must enter the Agreement and the terms of the Agreement must remain in effect.

17. The District, in the Agreement, prohibits Mr. Sorf from performing any work on the portion of his property that is within or close to the SLA corridor without approval from the District.

18. Any work performed by Mr. Sorf on the areas of his property within or close to the SLA Corridor must be consistent with construction standards set by the District.

19. The District retains authority to stop work and require correction of any work, or replacement of any materials, on Mr. Sorf's property which in its reasonable judgment does not comply with any term or condition of the Agreement.

20. In the event the District desires to have improvements on Mr. Sorf's property inspected by a qualified professional, Mr. Sorf is obligated to reimburse the District for the cost of such an inspection.

21. If the District modifies or destroys any of the improvements installed on Mr. Sorf's property that are within or in close proximity to the SLA corridor, Mr. Sorf must personally bear the financial implications of such actions.

22. The Agreement is only good for five (5) years and has a maximum duration of fifteen (15) years. Renewal of the Agreement is not guaranteed.

23. The Agreement can be terminated, for any reason, at the discretion of either party.

24. If a new agreement is not entered before the Agreement's expiration, Mr. Sorf's right to use his property, including the portion of his house that falls within the SLA corridor, could be terminated.

25. If the Agreement is terminated, Mr. Sorf will be expected to remove any improvements made to the SLA corridor, restore the SLA corridor according to District's specifications, and reimburse the District for any costs owed.

26. In any dispute relating to the Agreement, the District will not be liable for consequential damages to Mr. Sorf even if the District is found to be at fault.

27. Any rights given to Mr. Sorf in relation to use of the SLA corridor cannot be assigned or transferred without prior written consent of the District. The District is under no obligation to approve an assignment or transfer of Mr. Sorf's rights.

**FIRST CAUSE OF ACTION**  
**Inverse Condemnation**

28. Mr. Sorf incorporates all previous paragraphs as though fully stated herein.

29. Article I, Section 22 of the Utah Constitution provides, "Private property shall not be taken or damaged for public use without just compensation."

30. Mr. Sorf owns the property located at 9625 S. Mount Jordan Way.

31. Mr. Sorf has protectable interests in his property and has the right to just compensation when his property is taken for public use.

32. A default judgment was entered against Mr. Sorf on December 13, 2010.

33. The default judgment demands Mr. Sorf remove, at his expense, extensive landscaping and multiple physical structures from his property.

34. The default judgment restricts and otherwise limits the ways in which Mr. Sorf can use, develop and maintain his property.

35. The default judgment demands Mr. Sorf enter an Agreement with the District so that the southeast corner of his home can continue to occupy the SLA corridor. The Agreement gives the District further authority to regulate and restrict the usage of Mr. Sorf's property.

36. The default judgment obtained by the District and the restrictions and regulations being imposed on Mr. Sorf's property are for a public use, i.e. to provide water to the Salt Lake Valley and Salt Lake County.

37. The effect of the default judgment, in addition to the restrictions and regulations imposed by the District in relation to Mr. Sorf's property, foreclose any feasible option for Mr. Sorf to use his property.

38. The effect of the default judgment, in addition to the restrictions and regulations imposed by the District in relation to Mr. Sorf's property, have eliminated any economically viable use of Mr. Sorf's property.

39. When considering the actions of the District in this matter through the default judgment and the restrictions and regulations being imposed on Mr. Sorf's property, the character of the governmental actions, the economic impact of these actions on Mr. Sorf, and the extent to which the regulatory actions have interfered with Mr. Sorf's use and enjoyment of his

property, constitute a taking of protected property interests for a public purpose for which just compensation must be paid.

40. The District's actions through the default judgment and the restrictions and regulations being imposed on Mr. Sorf's property constitute the inverse condemnation of Mr. Sorf's property and a regulatory taking for which Mr. Sorf is entitled to just compensation from the District, in an amount to be determined at trial.

WHEREFORE, Mr. Sorf demands judgment as follows:

A. Mr. Sorf is entitled to an order declaring that the District's actions constitute the inverse condemnation of Mr. Sorf's property and a regulatory taking for which Mr. Sorf is entitled to just compensation from the District in an amount to be determined at trial; and

B. Mr. Sorf is entitled to an award from the District of his costs of Court, attorney fees and such other relief as the Court deems just.

#### **JURY DEMAND**

Pursuant to Rule 38 of the Utah Rules of Civil Procedure, Mr. Sorf hereby demands a jury on all issues triable to a jury and submits the statutory fee.

DATED this \_\_\_\_\_ day of April, 2011.

STRONG & HANNI

By \_\_\_\_\_  
Paul M. Belnap  
Bradley Wm. Bowen  
Casey W. Jones  
Attorneys for Zdenek Sorf

**CERTIFICATE OF SERVICE**

I herby certify that on this \_\_\_\_\_ day of April, 2011, a true and correct copy of the foregoing **DEFENDANT'S COUNTERCLAIM (PROPOSED)** and a copy of this Certificate of Service were served by the method indicated below to the following:

Shawn E. Draney	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Scott H. Martin	<input type="checkbox"/>	Hand Delivered
SNOW, CHRISTENSEN & MARTINEAU	<input type="checkbox"/>	Overnight Mail
10 Exchange Place, 11th Floor	<input type="checkbox"/>	Facsimile
P. O. Box 45000	<input type="checkbox"/>	e-mail
Salt Lake City, UT 84145		
<i>Attorneys for Plaintiff</i>		

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